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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 268.

DONALD M. McLEOD AND A. A. A. REID, PLAINTIFFS IN ERROR,

vs.

THE FOURTH NATIONAL BANK OF ST. LOUIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JULY 21, 1884.

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INDEX.

	Original.	Print.
Assignment of errors	1	1
Writ of error	1	2
Return to writ	2	2
Citation	3	3
Proof of service of citation	4	3
Caption	5	3
Petition	5	3
Summons	12	7
Marshal's return	13	7
Answer	13	8
Hearing before jury	14	8
Verdict	16	9
Judgment	16	9
Motion for new trial filed	16	9
Order overruling motion for new trial	17	10
Orders as to bill of exceptions	17	10
Order allowing writ of error, &c.	18	10
Bill of exceptions	18	11
Plaintiff's case	19	11
Testimony of Donald M. McLeod	19	11
Alex. A. Reid	26	15
Dugald Carmichael	26	15
James Hempseed	26	15

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	Original.	Print.
Testimony of David Aitken	27	15
Geo. Usher Graham	27	16
Exhibit No. 1 (McLeod)—Letter of cashier Fourth National Bank of St. Louis to whom it may concern, April 26, 1882	28	16
No. 2 (McLeod)—Bill of exchange, July 25, 1882	31	16
No. 3 (McLeod)—Bill of lading, ——— —, ——	33	17
No. 4 (McLeod)—Certificate of insurance	35	18
No. 5 (McLeod)—Power of hypothecation	36	18
No. 6 (McLeod)—Invoice	38	19
No. 7 (McLeod)—Certificate of weights	39	20
No. 8 (McLeod)—Invoice	40	20
No. 9 (McLeod)—Certificate of weights	41	21
Nos. 10 and 11 (McLeod)—Accounts of sales	42	22
No. 12 (McLeod)—Account current	42	22
Testimony of Gustavus Pietsch	42	23
Chas. Knoblauch and Paul Lichtenstein	46	25
John Mackay	48	26
John Hudson	49	26
L. C. Norvell	68	39
Chas. A. Lawton	91	58
C. E. Haggerty	94	60
A. A. Paton	97	62
Jacob D. Goldman	101	65
Christian Peper	106	68
Walter Walsh	111	71
J. T. Reifsneider	115	74
A. A. Paton (recalled)	128	84
Defendant's case	130	85
Testimony of John Nickerson	130	85
R. R. Hutchinson	136	89
Nathan Coronna	140	92
Richard Coler	143	94
J. C. H. D. Block	148	98
Warren Johnson	150	99
F. W. Biebinger	156	103
Plaintiffs' case in rebuttal	212	139
Testimony of A. A. Paten	212	139
Plaintiffs' requests as to charge	213	140
Charge to jury	218	142
Exceptions to charge	220	142
Motion for new trial	221	144
Bond	222	144
Clerk's certificate	223	145

¼ *Assignment of Errors by Plaintiffs in Error.*

In the Supreme Court of the United States.

DONALD M. MCLEOD *et al.*, Plaintiffs in Error,

v.

FOURTH NATIONAL BANK OF ST. LOUIS, Defendant in Error.

Now come Donald M. McLeod and Alexander A. A. Reid, plaintiffs in error, and for the assignment of errors in above-entitled cause assign—

First. The error of the court in refusing plaintiffs' instruction numbered one.

Second. The error of the court in refusing plaintiffs' instruction numbered two.

Third. The error of the court in refusing plaintiffs' instruction numbered three.

Fourth. The error of the court in refusing plaintiffs' instruction numbered four.

Fifth. The error of the court in refusing plaintiffs' instruction numbered five.

Sixth. The error of the court in refusing plaintiffs' instruction numbered six.

Seventh. The error of the court in refusing plaintiffs' instruction numbered seven.

Eighth. The error of the court in refusing plaintiffs' instruction numbered eight.

Ninth. The error of the court in that part of the charge to
½ the jury included in words commencing, "But who is responsible therefor? There is no doubt where the ultimate responsibility rests." * * * And therefore to the end of the charge.

Tenth. The error of the court in the following words of the charge to the jury: "The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false in the shipment; and, if so, did it assent thereto with the intent to defraud plaintiffs as acceptors or drawees of the bill?"

Eleventh. The error of the court in the following words of the charge to the jury: "Did the defendant, through its cashier or any other officer, know that there were false weights sent forward in the bill of lading, and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff?"

The error of the court in the following words of the charge to the jury: "Is there any testimony of any such fraudulent knowledge or intent upon the part of the defendant? There is no testimony showing that there was any such fraudulent intent on the part of the defendant; therefore your verdict will be for defendant."

Wherefore plaintiffs in error pray that for the foregoing manifest errors the judgment herein rendered may be reversed.

By FREDERICK N. JUDSON,
JOHN H. OVERALL,
Their Counsel.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the March term, 1884, thereof, between Donald M. McLeod and A. A. A. Reid, plaintiffs, and the Fourth National Bank of St. Louis, defendant, a manifest error hath happened, to the great damage of the said Donald M. McLeod and A. A. A. Reid, plaintiffs, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixth day of May, in the year of our Lord one thousand eight hundred and eighty-four.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk Circuit Court United States, Eastern District of Missouri,
By T. L. CRAWFORD, *Deputy.*

Allowed by—
SAMUEL TREAT, *Judge.*

2 *Return to Writ.*

UNITED STATES OF AMERICA, *Eastern District of Missouri.* } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 30th day of June, A. D. 1884.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk of said Court.

[Endorsed:] No. —. United States circuit court, eastern district of Missouri. Donald M. McLeod *et al. vs.* Fourth National Bank of St. Louis. Writ of error to the circuit court of the United States, eastern district of Missouri. Returned and filed 6th day of May, 1884. A. P. Selby, clerk.

3 The United States of America to the Fourth National Bank of St. Louis, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein Donald M. McLeod and A. A. A. Reid are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this sixth day of May, in the year of our Lord one thousand eight hundred and eighty-four.

SAMUEL TREAT,
Judge United States Circuit Court Eastern District of Missouri.

4 Service of within citation hereby accepted this 6th day of May, 1884, at city of St. Louis.

G. A. FINKELNBURG, *For Def't.*

[Endorsed:] United States circuit court, eastern district of Missouri. Donald M. McLeod *et al. vs.* Fourth National Bank of St. Louis. Citation. Filed May 6th, 1884. A. P. Selby, clerk.

In the Circuit Court of the United States in and for said District.

5 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

Be it remembered that on the second day of March, A. D. 1883, there was filed in said court a certain petition in words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, 1883.

DONALD M. MCLEOD [and] ARCHIBALD A. A. REID, Copartners as McLeod & Reid,

vs.

THE FOURTH NATIONAL BANK OF ST. LOUIS.

Plaintiffs state that they are now, and were at the date of the transactions hereinafter set forth, citizens of the Kingdom of Great Britain,

residing in the city of Glasgow, and were then and now are copartners under [the] name of McLeod & Reid, and that defendant was then and is now a national banking association organized under the laws of the United States and located and doing business in the State of Missouri, in the city of St. Louis, in the eastern district of said State.

Plaintiffs state that heretofore, on and prior to July 22, 1882, defendant held in its possession in pledge certain bales of cotton,
6 to wit, twelve hundred bales and over; that these bales were not merchantable bales, as known in commerce, containing four hundred and sixty pounds and over of cotton per bale, but the said bales had been by taking merchantable bales of the said ordinary weights to a cotton pickery and there dividing and then rebaling the cotton contained in such bales, so as to make about three new bales out of two merchantable bales, so that the new bales thus made contained only three hundred and twenty pounds or about that amount per bale.

That the bales thus ~~made~~ held by the defendant had been theretofore pledged to defendant by a certain copartnership then engaged in business in St. Louis as cotton buyers, composed of one L. C. Norvell, John Campield, and one Eimer; and defendant, being ignorant at the time of the loan, as plaintiffs are informed, of the dividing and rebaling of the cotton, had loaned thereon to said Norvell, Campield & Company a large sum of money, the exact amount of which is to plaintiffs unknown, but was far in excess of the actual value of the said cotton taken in pledge therefor.

That after the loans were thus made and prior to the date of the shipment to plaintiff hereinafter set forth defendant discovered the condition of said cotton, its actual weights, and the facts in relation to the division and rebaling of two bales into three as above detailed.

That at and before the said discovery by defendant of the true condition of the bales which it held in pledge the said Norvell, Campield & Company were insolvent, as defendant well knew, all
7 of their property being pledged to secure loans far in excess of the value of such property, and defendant well knew that its only resource for the payment of said indebtedness of Norvell, Campield & Company was the cotton which it held in pledge as aforesaid; that a sale of said cotton in the St. Louis or other markets, upon actual inspection and weighing, would realize only its true value, and would fall far short of paying the amount which it had loaned upon the cotton.

That defendant thereupon demanded of said Norvell, Campield & Company that L. C. Norvell, who was then in Great Britain, should at once dispose of said cotton in foreign markets; and on or about July 9, 1882, plaintiffs being ignorant of the facts hereinbefore recited, agreed with said L. C. Norvell to accept the sixty-day draft of said Norvell, Campield & Company for — sum of six thousand pounds sterling, upon a consignment of six hundred bales of said cotton, of merchantable weights, of about five hundred pounds per bale, said advance being at the rate of ten pounds sterling per

bale, and was based upon the cotton being of average merchantable bales.

That thereupon, on or about July 21, 1882, defendant being apprised of the aforesaid agreement of acceptance, and knowing well that said advance was based upon merchantable bales, and having all the bales in its possession, having loaned thereon, as it well knew, far more than the actual value thereof, did ship to plaintiffs six hundred of the rebaled and manipulated bales in its possession upon a through bill of lading, attached to the sixty-day bill of exchange for six thousand pounds sterling, drawn upon plaintiffs by Norvell, Campield & Company.

8 That upon the face of the bill of lading, by which defendant caused the said bales to be shipped, and which was attached to the said sixty-day bill of exchange, was set forth for purpose of deceiving plaintiffs a false and fraudulent statement of the aggregate weights of said six hundred bales, to wit, 276,815 pounds, instead of the true weight of said bales, which defendant well knew was far less than such amount, and did not exceed 192,381 pounds.

That in furtherance of said scheme was attached to the bill of exchange and bill of lading a certificate of insurance upon the six hundred bales thus shipped, in which the value of the cotton shipped under the bill of lading was falsely and fraudulently set forth at thirty-three thousand dollars, a sum far exceeding by many thousands of dollars, as defendant well knew, the actual value of the property insured.

That defendant did not itself purchase or discount the sixty-day bill of exchange drawn as aforesaid upon plaintiffs, with bill of lading and certificate of insurance attached, but caused Norvell, Campfield & Company to sell for its, defendant's, benefit the said bill of exchange for its full value, at the then current rate of exchange, to certain exchange brokers in [the] city of New York, to wit, Knoblauch & Lichtenstein, who were, as plaintiffs are advised, ignorant of the fraud thus being perpetrated, and who purchased the bill upon plaintiffs, in reliance upon the statements of the said documents attached thereto.

That defendant, being informed that said Knoblauch & Lich-
9 tenstein would purchase the bill of exchange drawn by Norvell, Campield & Company upon plaintiffs, did cause said Norvell, Campield & Company to draw their sight draft upon Knoblauch & Lichtenstein for the proceeds of said sixty-day bill to be purchased by them, to wit, the sum of twenty-nine thousand dollars, or about that sum, being the full amount of said bill, at the current rate of exchange, and did cause to be attached to the said sight draft the sixty-day bill of exchange drawn on plaintiffs and bill of lading and certificate of insurance, and all of said papers were thereupon forwarded by defendant to New York, and were there surrendered by defendant to said Knoblauch & Lichtenstein upon their payment of the sight draft drawn as aforesaid. Upon payment of said sight draft the defendant at once applied the proceeds thereof, to wit, the sum of twenty-nine thousand dollars, or about that sum, to its own reimbursement, principal and interest, upon the indebtedness to it

of said Norvell, Campield & Company, and paid in full, principal and interest, all amounts loaned on the cotton thus shipped.

That thereafter, in due course of mail, to wit, on or about Aug. 9, 1882, the said sixty-day bill of exchange thus drawn by Norvell, Campield & Company upon plaintiffs, with bill of lading and certificate of insurance attached thereto and purchased as above stated by Knoblauch & Lichtenstein, was presented to plaintiffs for acceptance.

That plaintiffs, in reliance upon and upon the faith of the statements of weights and value set forth in the bill of lading and certificate attached to the draft, having no opportunity to inspect any of the cotton, which was then en route and did not arrive at Glas-
10 gow till several weeks later, having neither knowledge nor suspicion of the facts hereinbefore detailed relative to the condition of the bales, but assuming, as they had a right to do, that they were merchantable bales, as known in commerce, accepted the said bill and became liable thereon for the said sum of six thousand pounds sterling to the holders of said bill, to wit, the indorsees, for value, of said Knoblauch & Lichtenstein, who were also innocent of the fraud, being purchasers of the bill of exchange for value before maturity in due course of business.

Plaintiffs further state that the fraud thus perpetrated upon them with the knowledge and for the benefit of defendant was not discovered by them until the arrival of the cotton in Glasgow, on or about August 29, 1882; that then, immediately upon inspection, the true condition of the cotton, theretofore fraudulently concealed, was discovered; that the bales were not of merchantable weight; that the average weight was but little over (320) three hundred and twenty pounds per bale, and the aggregate weight was not 276,815, as falsely stated in the bill of lading attached to the draft, but only 192,385 pounds.

That plaintiffs were compelled to pay and did pay the said bill of exchange thus endorsed as aforesaid for value before maturity to parties innocent of the fraud, and did pay the same, to wit, the sum of six thousand pounds sterling; that with the utmost diligence they were only able to realize from the sale of the said cotton the sum of forty-one hundred and seventy-three pounds sterling, which was its full value in the market at the time, and by reason of the
11 said deficiency in weight, fraudulently concealed by defendant from plaintiffs as aforesaid, a loss was sustained by plaintiffs of nine thousand dollars.

Plaintiffs state that Norvell, Campield & Company were then, and have ever since been and are now, insolvent; have abandoned business, and are wholly without means of any kind.

Plaintiffs state that defendant not only knew the actual condition of the bales of cotton thus shipped, but held and retained possession of them until its own claim was paid in full by the sale of the bill of exchange in New York, and that it was thus the beneficiary of the fraudulent concealment thus effected, to the injury of the plaintiffs.

Plaintiffs state that on the 4th day of January, 1883, they made

demand upon defendant for the said sum of nine thousand dollars thus lost by them as aforesaid, but said defendant refused to pay said sum or any part thereof.

Wherefore plaintiffs say that, by reason of the facts above set forth, an action hath accrued to them against defendant to recover their loss thus wrongfully sustained, and they ask judgment against defendant in [the] sum of nine thousand dollars, with interest from January 4, 1883, and costs.

By their attorneys, OVERALL & JUDSON.

And thereupon there was issued a summons, which summons, with the return thereon, is in words and figures following, to wit:

12 *Summons.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *sct:*

In the Circuit Court of the United States in and for said District.

The President of the United States of America to the marshal of the United States in and for said district, Greeting:

You are hereby commanded to summon the Fourth National Bank of St. Louis, a National Banking Association organized under the laws of the United States and located and doing business in the State of Missouri, in the city of St. Louis, in the eastern district of said State, that it be and appear before the honorable circuit court of the United States in and for the eastern district of Missouri, on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of March, 1883, then and there to answer the complaint of Donald M. McLeod and Archibald A. A. Reid, copartners as McLeod & Reid, citizens of Great Britain, residing in the city of Glasgow, as set forth in the petition filed in said court on the 2nd day of March, A. D. eighteen hundred and eighty-three.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 2nd day of March, A. D. eighteen hundred and eighty-three.

Issued at office, in the city of St. Louis, under the seal of
13 said circuit court, the day and year last aforesaid.

[SEAL.] A. P. SELBY, *Clerk.*

Return.

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *sct:*

I hereby certify that I have served the same on the within-named defendant, The Fourth National Bank of St. Louis, by delivering a copy of this writ to the president of the same, John C. D. Block, on March 2d, 1883, in St. Louis, in the above district.

FELIX COSTE,
United States Marshal, Eastern District of Missouri,
By GEO. M. STEVENS, *Deputy.*

And afterwards, to wit, on the 20th day of March, 1883, the following answer was filed in said cause, to wit:

Answer.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, 1883.

DONALD M. MCLEOD *et al.*, Plaintiffs,
vs.
THE FOURTH NATIONAL BANK OF ST. LOUIS, Defendant.

Now comes the defendant in the above-entitled cause, and for answer to plaintiffs' petition it denies each and every allegation
14 therein contained, excepting only its own corporate existence, which it admits.

FINKELNBURG & RASSIEUR,
Attorneys for Defendant.

And afterwards, to wit, on Thursday, April 2nd, 1884, at a regular stated term of said circuit court, the following proceedings were had and appear of record in said case, to wit:

Jury Sworn.

DONALD M. MCLEOD *et al.*, Plaintiffs,
vs.
FOURTH NATIONAL BANK, Defendant. } 2140.

Now come the parties, by their attorneys, the plaintiffs by Overall & Judson, and the defendant by Finkelnburg and Rassieur and George A. Madill, and this case being regularly called for trial, and both parties being ready, it is ordered that a jury come, and thereupon come said jury, to wit, Thomas Byrns, E. B. Brewster, Huntington Smith, E. P. Davenport, John E. Carpenter, George Horneker, William Welsh, Hiram Parish, L. D. Walker, James Grisham, Charles Humes, and W. E. Robinson, twelve good and lawful men duly empanelled and sworn to well and truly try the issues joined herein; and thereupon the evidence was partly heard, but, not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, on Friday, April 4th, 1884, at court, the following further proceedings were had and appear of record in said case, to wit:

15 DONALD M. MCLEOD, *et al.*, Plaintiffs,
vs.
FOURTH NATIONAL BANK, Defendant. } 2140.

Now again come the parties, by their attorneys, and also come the ury herein as on yesterday, and the hearing of this cause was pro-

ceeded with, but, not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, on Friday, April 5th, 1884, at court, the following further proceedings were had and appear of record, to wit:

DONALD M. MCLEOD, *et al.*, Plaintiffs,
[*vs.*]
FOURTH NATIONAL BANK, Defendant. } 2140.

Now again come the parties, by their attorneys; the jury also come as on yesterday, and the hearing of this cause was resumed, but, not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until Monday morning.

And afterwards, to wit, on Monday, April 7th, 1884, at court, the following further proceedings were had and appear of record in said case, to wit:

DONALD M. MCLEOD, *et al.*, Plaintiffs,
[*vs.*]
FOURTH NATIONAL BANK OF ST. LOUIS, Defendant. } 2140.

Now again come the parties, by their attorneys, the plaintiffs
16 by Overall and Judson, and the defendant by Finkelnburg and Rassieur and George A. Madill, and also come the jury herein as on Saturday, to wit, Thomas Byrns, E. B. Brewster, Huntington Smith, E. P. Davenport, John E. Carpenter, George Horneker, William Welsh, Hiram Parish, L. D. Walker, James Grisham, Charles Humes, and W. E. Robinson, who, after hearing the evidence and receiving the charge of the court, return the following verdict:

"We, the jury in the above entitled case, find our verdict for the defendant.

"(Signed) HUNTINGTON SMITH, *Foreman.*"

Judgment.

It is therefore considered by the court that the plaintiffs take nothing by their writ herein; that the defendant, the Fourth National Bank of St. Louis, go hence without day and have and recover of said plaintiffs, Donald M. McLeod and Archibald A. A. Reid, copartners as McLeod and Reid, its costs herein expended, and have thereof execution.

And on said 7th day of April, 1884, at court, the following further proceedings were had and appear of record in said case, to wit:

Mot'n Filed.

DONALD M. MCLEOD, *et al.*, Plaintiffs,
vs.
FOURTH NATIONAL BANK OF ST. LOUIS, Defendant. } 2140

Now come the plaintiffs, by attorneys, and file motion to set aside verdict and for a new trial herein.

And afterwards, to wit, on Monday, April 14, 1884, at court, the following further proceedings were had and appear of record in said case, to wit:

17 *Ord. Ov'l'g Mot.*

DONALD M. McLEOD *et al*, Plaintiffs,
vs.
FOURTH NATIONAL BANK, Defendant. } 2140.

Now come the parties, by their attorneys, and the court having considered the plaintiffs' motion to set aside verdict and judgment and for a new trial herein, orders that said motion be overruled.

And afterwards, to wit, on Monday, April 28th, 1884, at court, the following further proceedings were had and appear of record in said case, to wit:

DONALD M. McLEOD *et al.*, Plaintiffs,
vs.
FOURTH NATIONAL BANK, Defendant. } 2140.

On motion of their attorney leave is given plaintiffs until Saturday, May 3rd, to present bill of exceptions.

And afterwards, to wit, on Saturday, May 3rd, 1884, at court, the following proceedings were had and appear of record in said case, to wit:

DONALD M. McLEOD *et al.*, Plaintiffs,
vs.
FOURTH NATIONAL BANK, Defendant. } 2140.

On motion of their attorney an extension of time is given plaintiffs until May 7th instant to file bill of exceptions.

18 And afterwards, to wit, on Tuesday, May 6th, 1884, at court, the following further proceedings were had and appear of record in said case, to wit:

Writ of Error, Citation, & Bond Filed.

DONALD M. McLEOD *et al.*, Plaintiffs,
vs.
FOURTH NATIONAL BANK, Defendant. } 2140.

Now come the plaintiffs, by their attorneys, and present to the court their bill of exceptions, which is allowed, signed, and ordered to be filed and made part of the record herein; and said plaintiffs present to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said defendant to be and appear at a Supreme Court of the United States at the next term thereof, on the second Monday of October next, which said writ of error is allowed and said cita-

tion signed by the judge; and the said plaintiffs also present to the court their bond in the penal sum of five hundred dollars, which bond is approved and ordered to be filed.

Said bill of exceptions is in words and figures following, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA, *Eastern District of Missouri:*

In the Circuit Court of the United States for Eastern District of Missouri.

D. M. McLEOD [and] A. A. A. REID, Plaintiffs,

vs.

FOURTH NATIONAL BANK OF ST. LOUIS, Defendant.

19 Be it remembered that on the trial of this cause the following proceedings were had:

Plaintiffs, to sustain the issues on their part, introduced testimony as follows:

Deposition of McLeod.

The deposition of DONALD M. McLEOD, of Glasgow, Scotland, taken under commission upon interrogatories, was read in evidence as follows:

Q. State your name, age, residence, and occupation; if member of a copartnership, state the style of the copartnership, the names of the individual members thereof, how long it has been in business as such, and their relation, if any, to this action.

A. Donald Macfarlane MacLeod; thirty-seven years. I reside at 8 Victoria Terrace, Dowanhill, Glasgow. I am a merchant and a member of the firm of MacLeod and Reid. The individual members of that firm are Mr. A. A. A. Reid and myself, and we are the plaintiffs in this action. We have been in business as merchants since 1877.

Q. If in your answer to the foregoing interrogatory you state that you are one of the plaintiffs in this cause, state whether or not on about July 9th, 1882, your firm agreed with one L. C. Norvell to accept the sixty-day bill of exchange of Norvell, Camfield & Company, of St. Louis, Missouri, for (£6,000) six thousand pounds sterling against shipment of six hundred bales of cotton; if yea, state under what circumstances such agreement was made, and how you became acquainted with said Norvell, of said firm of Norvell, Camfield & Co.; if by letters of introduction from or on behalf of the defendant in this

20 case produce the same if in your possession and attach the same as exhibits to this your answer, and state the agreement made with said Norvell as to weights and quality of the cotton to be shipped and the documents to be attached to the said bill of exchange. Answer fully and at large.

A. Yes. On or about the 7th of July, 1882, my firm agreed with

Mr. L. C. Norvell to accept the sixty-day bill of exchange of Norvell, Camfield & Company, of St. Louis, Missouri, for £6,000 against shipment of 600 bales of cotton. Mr. Norvell called on my firm the latter part of June and said he would like to make a connection in Glasgow and do some business here. He showed us his bank testimonials, which consisted of (first) a letter from the Deutsche Bank, London, to their correspondents in England and Germany, which, as far as I can remember, said that Mr. Norvell had been introduced to them very warmly by their correspondents, the Fourth National Bank of St. Louis, and recommended Norvell's firm as one of good standing; (second) a general letter of introduction, addressed "To whom it may concern," from the Fourth National Bank of St. Louis, dated April 26th, 1882, which I now produce and annex to my deposition, marked Exhibit No. 1. From the character of these documents, together with the impression made upon me by Mr. Norvell's appearance and business ability, I believed his firm to be "reliable and trustworthy," as their bankers stated, and accordingly arranged with Norvell to call upon the buyers of cotton and see if business could be done. On July the 4th, 1882, my firm sold, as per Norvell's instructions, 200 bales, at 6¾*d.*, and on 7th July, 1882, 100 at 6¾*d.*, 100 at 6½*d.*, and 200 at 6*d.* from type samples brought by Mr. Norvell. Mr. Norvell assured us that the cotton to be shipped
21 would be equal to the type samples from which the sales were made, and he said that the bales would weigh somewhere about 500 lbs. each. He proposed to draw on us at the rate of £10 per bale against the cotton, and, as this left us a considerable apparent margin, my firm agreed to accept their bill of exchange on this basis, bill of lading and insurance certificate to be attached to bill of exchange.

Q. If you answer that such an agreement of acceptance was made, state if the said bill of exchange was presented for acceptance; if yea, state when, by whom, on whose behalf, and with what documents attached thereto. Was said bill accepted by your firm; if yea, had you then any knowledge of the actual weights and quality of the cotton shipped, except as described in the bill of lading or other documents attached to the bill of exchange? And if you have in your possession the bill of exchange and the bill of lading and other documents attached to the bill of exchange at time of presentment for acceptance, produce the same and each of them and attach them as exhibits to your answers. Did you or not receive any invoice and accompanying papers? If so, and in your possession, produce the same and attach them as exhibits to your answer.

A. Yes; the bill of exchange was presented by the Commercial Bank of Scotland, who were acting in this matter for the Deutsche Bank, London, to my firm for acceptance on August 9th, 1882, and on the same day was accepted. The documents attached to the bill of exchange were (first) bill of lading for 600 bales, (second) insurance certificate, and (third) letter of hypothecation. I now produce and attach to my deposition the
22 bill of exchange, marked Exhibit No. 2, the bill of lading, marked Exhibit No. 3, the insurance certificate, marked

Exhibit No. 4, and the letter of hypothecation, marked Exhibit No. 5. At the time of acceptance my firm had no knowledge of the actual weights nor the quality of the cotton shipped, except as described in the invoices and bill of lading. On August 9th, 1882, we received by mail from Norvell, Camfield & Co. the invoices of the cotton and the weigher's certificates. I now produce and attach to my deposition (first) invoice of 200 bales, marked Exhibit No. 6, (second) certificate of weights of 200 bales, marked Exhibit No. 7, (third) invoice of 400 bales, marked Exhibit No. 8, and (fourth) certificate of weights of 400 bales, marked Exhibit No. 9. On examination of all these documents everything seemed in order. The invoices were made out at the prices at which the cotton was sold, and the weight of cotton as stated in the bill of lading agreed with the invoices and weigher's certificates. Believing that we were doing business with a firm that was "reliable and trustworthy," as their bankers had stated, we therefore relied on the genuineness and accuracy of these documents, and so were induced to accept, and did accept the bill of exchange referred to for £6,000.

Q. Did the six hundred bales of cotton so shipped arrive in Glasgow; if so, by what steamer and in what condition as to weight? What, if any, marks of identification were upon the bales when delivered? Was said cotton weighed at time of lading; if so, by whom and with what results, if you know? If there was any discrepancy between the actual weights of the cotton and the
23 weight shown by the bill of lading, state when the fact was first made known to you or either of your firm. If you are acquainted with the average weights of bales of cotton, state whether the bales in actual weights were of average weights or not.

A. On or about August 29th, 1882, the steamship "State of Georgia" arrived in Glasgow with the 600 bales cotton on board. We found the cotton running short in weight. We found there were 600 bales. There were 200 marked M. A. C., 100 marked P. E. P., 100 marked S. O. C., and 200 marked B. O. X. We instructed James Hempseed, licensed weigher, to weigh the cotton as it came from the ship, and he did so on the steamship dock, and on receipt of the weights for the 200 bales which he weighed first was my firm made aware for the first time of the discrepancy between the actual weights and those stated in the invoices and bill of lading. We found the gross weight of the 200 M. A. C. came to 30 tons 11 cwts. 2 qrs. and 3 lbs., or 68,491 lbs., whereas the invoices made the weight to be 89,986 lbs., showing a deficiency of 21,495 lbs. on the 200 bales. When Hempseed had completed the weighing of the entire 600 bales we found the gross weight of the 600 to be 91 tons 19 cwts. 2 qrs. and 19 lbs., or 206,043 lbs., whereas the invoices and bill of lading called for 276,815 lbs., showing a deficiency of 70,772 lbs. In other words, the bales, instead of averaging a gross weight of 461 lbs. each, as per invoices and bill of lading, did average 343 lbs. per bale gross weight. My understanding of the average weight of bales of cotton is from 450 to 500 lbs., and these being very much under that were not of average weight.

Q. Was the bill of exchange accepted by you—paid by
24 you; and, if so, when and to whom, if you know? State who were the holders of the bill, when accepted, and when paid.

A. Yes; the bill of exchange was paid by my firm on August the 29th, 1882, to the Commercial Bank of Scotland, to whom it had been forwarded by the Deutsche Bank, London, for collection. My firm had to pay the bill of exchange in order to get the bill of lading and so obtained possession of the cotton. The ship-owners would not allow us to examine the cotton or take delivery without producing the bill of lading.

Q. Were the six hundred bales of cotton shipped to you sold by you; if yea, at what price? What, if any, efforts were made by your firm to realize the best market price? Were the prices realized the best market prices for cotton of that grade and quality? What, if you know, was the quality and grade of this cotton, and how did it compare with the sample shown you by Norvell? Through whose agency was the cotton sold?

A. Of the 600 bales 300 were taken, as conform to Norvell's sample, at, say, 6*d*. per 200 and 6½*d*. per 100, delivery being taken on the quay. The other 300 bales were sold, partly in Glasgow and partly in Liverpool, at prices ranging from 5¾*d*. to 6 13/16*d*., through our brokers, Messrs. Ritchie & Murdoch, cotton brokers of Glasgow and Liverpool. Every effort was made, both by ourselves and our brokers, to realize the best prices for the 300 bales [of] cotton, which were not equal to sample, by offering it in the Glasgow and Liverpool markets to all likely buyers, and the rates realized were full market rates. As to the quality of the cotton, 300 bales were conform- to sample and 300 were not equal to sample, being mixed and somewhat sandy.

25 Q. Did your firm incur any loss through any shortage in the actual weights of the cotton as compared with the weights shown in the bill of lading? If yea, state herein the amount of said loss in English and American currency, and state wherein and how it occurred. Has any part of said amount been paid?

A. Owing to the weights of these 600 bales having turned out so far short of the weights specified in the invoices and bill of lading received from Norvell, Camfield & Company, we have suffered a loss of £1,792 5 9, equivalent, at the customs' rate of exchange of $4.8665 to the £ sterling, to $8,722.15—the details of which appear from the following documents: (First) account sales of 400 bales, which I produce and attach to my deposition, marked Exhibit No. 10; (second) account sales of 200 bales, which I also produce and attach to my deposition, marked Exhibit No. 11; (third) account current made up to January 4th, 1883, which I also produce and attach to my deposition, marked Exhibit No. 12. These account sales and accounts current are correct excerpts taken from the business books of my firm. No part of the £1,792 5 9—our loss—has been paid to us.

Q. Do you know or can you set forth any other matter or thing

which may be of benefit or advantage to the parties in this cause, or either of them, or that may be material to the subject of this your examination, as to the matters in question in this cause? If yea, set the same forth fully and at large in your answer.

A. I know of no other matter or thing which may benefit or advantage the parties in this cause, or either of them, or that
26 may be material to the subject of this my examination, as to the matters in question in this cause.

The deposition of Alexander A. A. Reid, one of plaintiffs, also taken under commission upon interrogatories, was also read in evidence, said witness, Reid, deposing to same facts as his partner, McLeod, and corroborating the same and identifying the several documents produced and identified by McLeod.

The deposition of Dugald Carmichael, also taken under commission upon interrogatories, was as follows: That he resided in Glasgow and in August, 1882, was a cotton broker and was employed by McLeod & Reid to sample the bales of cotton in question when delivered, and sampled each bale; that the bales were well hooped and had no appearance of having been opened or tampered with; he saw the witness Hempseed weigh all the bales, and in his experience of 13 years never saw American bales running so light.

The deposition of James Hempseed, of Glasgow, taken as the preceding, was read, to following effect: That he had been for 26 years to the present time a licensed, sworn weigher in [the] city of Glasgow. In [the] first week of September, 1882, he weighed for McLeod & Reid 600 bales of cotton delivered from steamer "State of Georgia" and consigned to McLeod & Reid. Each bale was weighed by itself on beam and scale, the mark taken and jotted accurately down, and all done under his personal supervision. The witness pro-
27 duced in evidence the detailed statements showing the weight of each of the 600 bales from original memoranda made by him at the time, said weights showing the aggregate gross weight of the 600 bales to be 91 tons 19 cwt. 2 qrs. and 19 lbs., or 206,043 pounds. Two hundred of the bales were marked M A C, 200 B O X, 100 S O C, and 100 P E P. Each bale came under his personal supervision, and he noticed no appearance of any of them having been broken or tampered with in any way during shipment or in course of transit.

David Aitken, whose deposition was taken as the preceding, testified that he was collector and traffic manager to the trustees of the Clyde navigation in 1882 and that he caused the 600 bales in question, delivered from steamer Georgia for McLeod & Reid, to be weighed as they left the dock, the dock dues being payable at so much per ton of twenty hundredweight, and in order to check the weights the Clyde trustees have weigh-bridges along the quay; that this system brings out a result accurate enough for their purpose, and that there might be a variance of two or three tons in an aggregate of 600 bales cotton from an accurate weight on beam and scale. The result in this case was [a] total of 92 tons 18 cwt.

George Usher Graham, whose deposition was taken in same manner as preceding witness, testified that he was in 1882, and is now, a cotton broker, and has had over 20 years' experience as such; was employed by McLeod & Reid to sample the 600 bales of cot-
28 ton delivered from steamer "State of Georgia" in last of August, 1882. 300 bales conformed to original sample and 300 did not, being lower in grade and very sandy; was employed to sell the 300 bales which did conform to sample, and same was sold at full market prices, at the time ranging from $5\frac{3}{4}d.$ and $6\frac{13}{16}d.$; used his best efforts to get good prices by offering to all likely buyers.

The following is the letter of introduction referred to by D. M. McLeod as Exhibit No. 1:

Fourth National Bank of St. Louis.

ST. LOUIS, *April* 26, 1882.

To whom it may concern:

This is to introduce *in* the bearer, Mr. L. C. Norvell, senior — of the firm [of] "Norvell, Camfield & Co.," cotton buyers of this city.

Mr. Norvell is regarded by cotton men of this city as an excellent judge of the staple, & from our own experience, having handled their domestic bills against purchases of cotton to a large extent, we know the firm to have given general satisfaction to their patrons.

Mr. N. visits England and the Continent with a view of extending the firm's business connections abroad, and, believing them to be reliable & trustworthy, we cheerfully commend their house to the trade in their line.

[Seal of Fourth Nat. B'k.]

Very respectfully, F. W. BIEBINGER, *Cashier.*

29 & 30 The following is the bill of exchange referred to as Exhibit 2 by D. M. McLeod:

31 The following is the bill of exchange referred to as Exhibit 2 of D. M. McLeod:

EXHIBIT No. 2.

Bill of Exchange.

[Deutsche Bank, Berlin, London Agency. 1517. Foreign One Pound. Foreign One Pound. Foreign One Pound.]

Exchange for Oct.

£6,000. ST. LOUIS, *July 25th*, 1882.

Sixty days after sight of this first — of exchange (second and third unpaid) pay to the order of ourselves, in London, six thousand pounds sterling, value received, and charge the same to account of—

Your obed't serv'ts,

NORVELL, CAMFIELD & CO.

Mess. MacLeod and Reid, Glasgow, Scot'd.

600 b. c. b. l. attached.

Ac. 1623.

[Written across the face in red ink:]

No. 616.

GLASGOW 9 *Aug.*, 1882.

Accepted, payable at the Bank of Scotland, London.

MACLEOD & REID.

(Attached.)

Bill due	£6,000		
Stamp on policy		17	
Noting—traveling	6,000	17	
Rebate commission	24	3	3
	5,976	13	9
Postage com'n	2	19	10
	5,979	13	7

½% below the bank rate.

(Endorsed:) Pay to the order of Knoglauch & Lightenstein. Norvell, Camfield & Co. Pay to the order of Deutsche Bank (Berlin), London agency. Value in account. Knoblaugh & Lichtenstein.

32 GLASGOW, 13 *August*, 1883.

This is the bill of exchange marked Exhibit No. 2, referred to in the deposition of D. McLeod of this date.

D. M. MACLEOD.

[SEAL.] W. GIBSON,

U. S. Vice-Consul, Glasgow, Scotland, Commissioner.

33 The following is the bill of lading referred to as Exhibit 3 of D. M. McLeod:

EXHIBIT No. 3.

Bill of Lading.

The bill of lading referred to as Exhibit 2 in testimony of D. M. McLeod was a printed form, entitled "Through bill of lading No. 9397, Commercial Express Line, in connection with State Line of steamers from St. Louis to Glasgow, Scotland," dated St. Louis, July 25th, 1882, and endorsed in blank by Norvell, Camfield & Company, and contained:

"Shipped in apparent good order by Norvell, Camfield & Co., the packages, property, or articles marked, numbered, and specified as below; contents, guage, value, and condition of contents unknown, weight subject to correction:

"Order.	Marks & numbers.	Merchandize.
"Glasgow, Scot.	200 B. O. X.	(600) six hundred bales cotton.
"Notify McLeod & Reid.	100 P. E. T.	
"Gross weight, 276,815 lbs.	100 S. O. C.	
"Through rate, 40 90, gold, per 100 lbs., @ 4.80 to the £.	200 M. A. C.	

"To be delivered in like good order and condition unto —— order —— or to their assigns, he or they paying freight in cash im-
34 mediately on landing the goods, without any allowance of credit or discount, at the rate of forty and 90 pence per 100 gross weight delivered, with average accustomed (at 4.80 to the pound sterling) under the following terms and conditions:"

Here follows a large number of conditions, among which is the following:

"8. Weight, measure, *guage*, condition, contents, quality, and brand, and value unknown, and not answerable for leakage, breakage, or rust, for mortality however caused, nor for damages caused by heavy weather, or pitching or rolling of the vessel, heating, mould or inherent deterioration." * * *

35 EXHIBIT No. 4.

Certificate of Insurance.

The "certificate of insurance," read in evidence — referred to as Exhibit No. 4 in testimony of said D. M. McLeod, was in printed form, issued by Boston Marine Insurance Company, countersigned — St. Louis by H. M. Blossom & Co., agents, of date July 25th, 1882, certifying that on said date said company, by its policy, issued (33,845) thirty-three thousand eight hundred and forty-five dollars in gold on 600 bales of cotton, valued at sum insured, described as shipped under foregoing bill of lading, and of the marks therein stated, loss payable to order of Norvell, Camfield & Company, and indorsed in blank by said Norvell, Camfield & Company.

36 The following is the "power of hypothecation" referred to as Exhibit No. 5:

EXHIBIT No. 5.

Power of Hypothecation.

ST. LOUIS, MO., *July 25th*, 1882.

[Deutsche Bank, Berlin, London Agency. 1517.]

Messrs. ——.

GENTLEMEN: We have sold this day to Messrs. Knoblauch & Lichtenstein bill of exchange on MacLeod & Reid, Glasgow, by London, £6,000 60*s.*, against a shipment of 600 bales of cotton in the Boston Marine Ins. Co. for $338.45 per State Line for Glasgow. Bill of lading to order herewith, with the understanding that the bills of lading are lodged as collateral security for the acceptance, and if, in your discretion, — deem it advisable for the payment of said bill, and you are authorized in case * * * -nk it necessary to insure and in case of non-acceptance or non-payment or * * * -on of the drawee, to place the said merchandise in the hands of your brokers * * * on account of whom it may concern, and apply the proceeds in or towards * * * of the bill.

Yours respectfully,

NORVELL, CAMFIELD & Co.

[Written across the face in red ink:] If the documents hereby hypothecated are surrendered against payment of this bill before maturity, the allowance of discount to the acceptor is to be at the rate of one-half per cent. per annum above the then advertised rate for short deposits of the leading joint stock banks in London. Original.

37 GLASGOW, 13 *August*, 1883.

This is the letter of hypothecation marked Exhibit No. 5, referred to in the deposition of D. M. McLeod of this date.

D. M. MACLEOD.

[SEAL.] W. GIBSON,

U. S. Vice-Consul, Glasgow, Scotland, Commissioner.

No. 6.

38 Invoice two hundred bales cotton, shipped by Norvell, Camfield & Co., St. Louis, Mo., U. S. A., to Mess. MacLeod & Reid, Glasgow, Scot'd, for ac. of Mess. A. and A. Galbrath.

200 b. c., marked M. A. C., type No. 2d:

Weighing, gross	89,986 lbs.				
Less 6%	5,399 "				
	84,507 " @ 6¾ cts			£2,379	0 2
Less freight on 89,986 lbs., 40.91 ct.		£153	7 9		
" insurance		9	2 5		
				162	10 2
				£2,216	10 0

St. Louis, Mo., July 25th, 1882.

NORVELL, CAMFIELD & CO.

E. & O. E.
Sale 920.

[Written across the face in red ink:]

GLASGOW, *8th September*, 1883.

This is the invoice and certificate of weight, marked "A," referred to in affidavit by Donald MacFarlane MacLeod of this date.

D. M. MACLEOD.

W. GIBSON,

U. S. Vice & Deputy Consul, Glasgow.

GLASGOW, *13th August*, 1883.

This is the invoice, marked Exhibit No. 6, referred to in the deposition of D. M. MacLeod of this date.

D. M. MACLEOD.

[SEAL.] W. GIBSON,

U. S. Vice-Consul, Glasgow, Scotland, Commissioner.

39

No. 7.

ST. LOUIS, *July 24th*, 1882.

Certificate of weight of 200 bales cotton reweighed for account of Mess. Norvell, Camfield & Co. H.

M. A. C.----	358	366	320	394	403	382	494	483	448	442
	383	350	340	453	457	452	412	492	454	530
	350	346	320	433	442	490	465	495	437	484
	335	365	358	467	472	480	470	490	394	509
	325	380	483	460	442	477	486	418	508	575
	336	333	462	423	382	464	417	470	498	465
	346	364	430	402	478	487	447	488	547	484
	378	362	460	470	452	440	482	490	498	516
	348	328	478	403	478	417	445	455	523	475
	388	330	427	460	402	425	470	533	447	469
	3,547	3,524	4,088	4,365	4,408	4,514	4,588	4,814	4,755	5,049
	325	388	440	442	572	527	507	520	510	470
	397	522	493	452	523	537	445	529	473	483
	375	538	477	573	362	458	420	539	512	483
	398	348	526	557	549	548	530	473	496	505
	366	365	418	524	521	447	393	412	394	527
	322	508	523	439	395	493	518	456	546	377
	398	325	510	536	469	494	454	472	467	495
	362	354	540	470	447	473	550	440	402	465
	327	347	382	418	432	465	441	554	502	543
	306	366	553	538	454	480	455	490	465	548
	3,576	4,061	4,863	4,927	4,724	4,922	4,713	4,885	4,767	4,896

Total weight, 89,986.

I certify that the above weights are correct.

C. E. HAGGERTY, *Reweigher.*

[On the margin:]

GLASGOW, 13 *August*, 1883.

This is the certificate of weights, marked Exhibit No. 7, referred to in the deposition of D. M. Macleod of this date.

D. M. MACLEOD.

[SEAL.] W. GIBSON,

U. S. Vice-Consul, Glasgow, Scotland, Commissioner.

40

No. 8.

Invoice [of] four hundred bales [of] cotton shipped by Norvell, Camfield & Co., St. Louis, Mo., U. S. A., to Mess. MacLeod & Reid, Glasgow, Scotland, for ac. of the Lanark Spinning Company.

100 b. c., marked P. E. T., type No. 1:

Weighing, gross----------	48,474 lbs.		
Less 6%----------	2,908 "		
	45,556 "	@ 6¾ ct.------	£1,281 10 10

100 b. c., marked S. O. C., type No. 2:

Weighing, gross ----------	48,610 lbs.		
Less 6%----------	2,917 "		
	45,693 "	@ 6½ ct.------	£1,237 10 4

200 b. c., marked B. O. X., type No. 4:

Weighing, gross	89,745 lbs.			
Less 6%	5,385 "			
	84,360 "	@ 6 ct.	£2,109	0 0
			£4,628	1 2
Less freight on 186,829 lbs., 40.91ct.		£318 9 3		
" insurance		18 4 11		
			336	14 2
			£4,291	6 0

St. Louis, Mo., U. S. A., July 25th, 1882.

NORVELL, CAMFIELD & CO.

E. & O. E.
Sale 921.

[Written across the face in red ink:]

GLASGOW, *13th August*, 1883.

This is the invoice, marked Exhibit No. 8, referred to in deposition of D. M. Macleod of this date.

D. M. MACLEOD.

[SEAL.] W. GIBSON,
U. S. Vice-Consul, Glasgow, Scotland, Commissioner.

41 No. 9.

ST. LOUIS, *July 24th*, 1882.

Certificate of weights of 400 bales cotton reweighed for account of Mess. Norvell, Campfield & Co.

397	372	385	380	464	496	520	521	512	474
383	381	390	362	494	404	445	427	460	495
341	342	372	395	495	512	544	458	443	533
362	367	389	386	425	462	520	414	510	532
378	374	365	371	508	474	528	498	490	426
354	369	376	383	538	510	512	543	520	411
340	356	355	367	474	478	522	518	420	457
391	348	397	396	538	473	500	533	479	500
386	362	368	389	479	483	558	338	540	510
365	371	373	390	502	414	530	492	505	490
3,697	3,642	3,770	3,819	5,017	4,706	5,179	4,742	4,879	4,828
458	546	474	519	498	428	570	421	433	384
478	468	490	414	485	458	440	442	396	445
512	476	475	468	497	482	370	425	376	450
380	475	496	365	460	470	405	466	444	448
448	478	469	539	472	468	463	397	422	390
442	495	515	510	410	453	426	425	457	467
507	485	479	455	528	460	462	441	430	410
532	415	503	518	430	448	432	448	382	445
490	506	515	473	515	433	441	413	462	463
378	400	475	466	444	442	416	449	412	440
4,625	4,844	4,891	4,727	4,729	4,542	4,225	4,327	4,214	4,342

496	493	527	483	503	531	478	508	428	497
502	497	491	492	491	493	480	496	532	485
478	481	487	476	473	487	496	472	496	476
463	473	472	506	462	510	487	473	483	462
501	422	438	498	480	490	451	472	478	493
473	489	473	522	478	487	396	496	491	496
464	496	485	471	527	476	480	473	502	521
521	477	521	483	469	523	527	481	380	488
402	460	504	462	438	491	511	502	429	494
518	493	571	497	396	486	508	387	531	502
4,818	4,876	4,969	4,890	4,717	4,974	4,814	4,752	4,750	4,914
478	484	466	523	454	518	512	503	533	503
496	508	497	510	518	462	496	470	510	392
502	394	448	540	375	438	394	538	383	531
483	498	537	383	550	439	505	496	540	496
491	523	522	420	507	473	457	396	439	487
527	530	538	553	465	412	508	532	557	493
486	465	425	524	530	554	493	487	418	396
455	479	440	470	529	490	561	491	497	547
533	525	526	536	447	510	518	502	481	521
448	398	418	493	537	473	455	455	526	438
4,899	4,804	4,817	4,952	4,912	4,769	4,899	4,870	4,884	4,804

I certify that the above weights are correct.

C. E. HAGGERTY, *Reweigher.*

B. O. X.	200	w'g	89,745 lb.
P. E. T.	100	"	48,474 "
S. O. C.	100	"	48,610 "
	400		186,829 "

[On margin:] B. O. X., 1–200, total weight, 89,745 lb; P. E. T., 1–100, total weight, 48,474 lb; S. O. C., 1–100, total weight, 48,610 lb.

[Written across the face in red ink:]

GLASGOW, 13 *August*, 1883.

This is the certificate of weight marked Exhibit No. 9, referred to in the deposition of D. M. Macleod of this date.

D. W. MACLEOD.

[SEAL.] W. GIBSON,

U. S. Vice-Consul, Glasgow, Scotland, Commissioner.

42 Ex. 10 & 11.

Exhibits Nos. 10 and 11, referred to, stated in detail account of sales of the 600 bales of cotton, showing aggregate net proceeds, after deducting charges of £4,174 3 1.

Ex. 12.

Exhibit No. 12, referred to, was a statement of account current of plaintiffs with Norvell, Camfield & Company, wherein, after crediting the latter with net proceeds of sale of the 600 bales, and also

with rebate of freight charges and landing dues collected (aggregating £123 15 3), a balance of loss on the consignment of the 600 bales is shown due as sustained by plaintiffs of £1,792 5 9.

Letter to Gustavus Pietsch.

Gustavus Pietsch, of London, England, whose deposition was taken under commission upon interrogatories, testified as follows: Am manager of the London branch of the Deutsche Bank in Berlin, and have held such position continuously since 1873. As such manager had correspondence with defendant, The Fourth National Bank of St. Louis, in 1882, relative to visit to England of L. C. Norvell of firm of Norvell, Camfield & Company. The correspondence originated with the letter written by defendant to the London agency of the Deutsche Bank, dated April 26, 1882; at the time was acquainted with the defendant, the London agency of the Deutsche Bank and defendant having transacted business together since 1879. The letter referred to was produced as follows:

43 *Letter.*

[Seal of 4th Nat. B'k.]

FOURTH NATIONAL BANK OF ST. LOUIS,
ST. LOUIS, *April* 26, 1882.

To the "Deutsche Bank, Berlin," London agency, London.

GENTLEMEN: Permit me to introduce to you in the bearer of this Mr. L. C. Norvell, of the firm "Norvell, Camfield & Co.," cotton buyers of this city. Mr. Norvell visits England with a view of forming business connections, soliciting orders from spinners & others for the purchase of cotton, & in pursuit of this object may have occasion to consult and advise with you.

I would bespeak for Mr. N. your kind attention, and any favors shown him will be duly appreciated.

[Seal of 4th Nat. B'k.]

Yours most resp'y, F. W. BIEBINGER, *Cashier.*

Said Norvell was introduced to witness' bank, said Norvell calling at witness' bank in person and presenting to witness above letter on May 16, 1882. No other letter of introduction of said Norvell was received by him, witness, or his bank. At Norvell's request witness gave him a letter of introduction to the National Provincial Bank of England, Limited, at Liverpool. This letter was handed by witness to Norvell personally on or about its date, June 3, 1882. The original of the letter not being in witness' possession, a press copy of same was introduced, as follows:

Letter.

NAT. PROV. BANK OF ENGLAND, L'D,
LIVERPOOL, *June* 3, 1882.

DEAR SIRS: We beg to introduce to you the bearer of this letter, Mr. L. C. Norvell, of the firm "Norvell, Camfield & Co.," who has

been warmly recommended to us by our friends, the Fourth
44 National Bank of St. Louis, U. S. A. We shall be glad if you will kindly render him any assistance which may be in your power towards the attainment of the objects he has in view, and, thanking you beforehand, remain, dear sirs, yours faithfully,

G. PEITSCH.

This was the only letter of introduction given by witness to Norvell. On June 3, 1882, on the occasion of writing the above letter, witness wrote the following letter to defendant:

Letter.

DEUTSCHE BANK (LONDON AGENCY),

LONDON, 3 *June*, 1882.

Fourth National Bank of St. Louis, St. Louis.

DEAR SIRS: We shall feel obliged by your favoring us with some information respecting the means, trustworthiness, and standing of the firm mentioned at foot.

Any communication you may be pleased to make will be considered by us as strictly confidential, and thanking you beforehand, we are, dear sirs, yours faithfully,

(Signed) G. PIETSCH, *Manager*.

Norvell, Camfield & Co., St. Louis.

And on or about June 15, 1882, witness received the following letter in reply from defendant:

45 *Letter.*

Fourth National Bank of St. Louis. Foreign department.

ST. LOUIS, *June* 15, 1882.

Deutsche Bank, Berlin, London agency, London:

GENTS: In anser to yours of 3rd inst., inquiring ab't means, trustworthiness, and standing of Norvell, Camfield & Co., of this city, I desire to say that Mr. Camfield, one of the partners, informs me that the capital invested in their concern is about $15,000, owned almost entirely by himself & the junior partner, Mr. Eimer. While Norvell, the senior of the firm, is well regarded as an excellent judge of cotton, he personally does not enjoy the confidence & respect in the same degree as the other members of the house. Nevertheless I am of opinion that so long as Mr. Camfield remains in the firm he will carry out its contracts & obligations faithfully & to the best of his ability.

Resp'y, F. W. BIEBINGER, *Cashier*.

Strictly confidential, & W. O. O.

Subsequent to the receipt of the letter of April 26, and prior to that of June 15, witness' bank received a call from the London branch of the Bank of Scotland, with reference to Norvell, Camfield

& Co., and, in reply to their inquiries, witness ~~inferred then~~ informed them that Norvell, Camfield & Co. had been introduced to them (witness'
46 bank) as cotton buyers, and subsequently, after the receipt of the letter of June 15, the representative of that bank calling again for the same purpose, witness read to him the letter of June 15.

Charles Knoblauch and Paul Lichtenstein (whose depositions were taken under commission upon interrogatories) severally testified that in the year 1882 they were partners in the banking business in the city of New York, with the Deutsche Bank as special partner; that in July, 1882, their partnership brought through John Mackay, a broker in foreign exchange, a certain bill of exchange to be drawn by Norvell, Camfield & Co., of St. Louis, for (£6,000) six thousand pounds sterling, at sixty days' sight upon McLeod & Reid, Glasgow, Scotland; the purchase was made at $4.83½ per pound sterling. Neither of the partners had any acquaintance with either of the firm of Norvell, Camfield & Co. at the time of the transaction.

A letter signed by the cashier of the Fourth National Bank, together with other letters relative to the character and standing of Norvell, Camfield & Co., was shown to them (Knoblauch and Lichtenstein) by Mr. Mackay, and read by them prior to the purchase of the bill of exchange.

Witnesses each identified the letter addressed "To whom it may concern," dated St. Louis, April 26, 1882, and signed "F. W. Biebinger, cashier," as the letter of the cashier so shown to and read by them prior to the purchase of the bill. The bill of exchange so purchased was received by them on July 27, 1882, with the following documents attached: Bill of lading for 600 bales of cotton,
47 insurance certificate, and letter of hypothecation.

Witnesses each identified the bill of exchange, bill of lading, insurance certificate, and letter of hypothecation produced by witness McLeod (*supra*) as the bill of exchange purchased by them and the documents attached thereto.

The bill of exchange was purchased in this manner: A sight draft was drawn ~~in~~ their favor attached to the bill of exchange and documents for the proceeds of the sale, amounting to $29,010.00. Such draft was drawn by Norvell, Camfield & Co. for their own account, and was paid by their, witnesses', firm on July 17, 1882, to the Chatham National Bank of New York. The said sight draft was produced as follows:

$29,010. ST. LOUIS, *July 25th*, 1882.

At sight pay to the order of ourselves twenty-nine thousand and ten dollars, value received, 600 bales of cotton. B. l. attached to MacLeod & Reid.

NORVELL, CAMFIELD & CO.

To Mess. Knoblauch & Lichtenstein, New York.

(Across the face of this draft is stamped three times the word "Paid," and there is also on the face of it the following stamp: "Knoblauch & Lichtenstein, New York, July 27, 1882." Across the

back of the draft appear the following endorsements: "Norvell, Camfield & Co.," "Pay Chatham Nat'l Bank, N., or order, for collection for account Fourth National Bank of St. Louis, F. W. Biebinger, cashier," and "The Chatham Nat'l Bank, New York, paid.")

Neither of said firm of Knoblauch & Lichtenstein had any knowl-
48 edge whatever of the quality or quantity of the 600 bales of cotton shipped under the bill of lading, nor did they know anything about any manipulation of the bales.

The bill of exchange was forwarded by Knoblauch & Lichtenstein, with all documents attached, to their correspondent in London, and by them presented to the drawees, who accepted the draft and paid at once under discount.

John Mackay (whose deposition was taken in like manner) testified that, as exchange broker in the city of New York, in July, 1882, he negotiated the sale of the bill of exchange in question, with documents attached, to Knoblauch & Lichtenstein. He never saw the bill of exchange or documents, but his agency in the matter terminated when he gave Messrs. Knoblauch & Lichtenstein a contract of purchase and to Mr. Norvell a duplicate of it. In his negotiations with Messrs. Knoblauch & Lichtenstein he showed them, with other letters, the letter addressed "To whom it may concern," dated St. Louis, April 26, 1882 (Exhibit No. 1 to deposition of D. M. McLeod, *supra*), which, being shown to witness, was identified by him; and said letter was read by Knoblauch & Lichtenstein before agreeing to purchase

Mr. Norvell was on his way home from Europe at the time. He stated that while drawing at £10 the cotton was worth £12 10 0. Witness offered the bill to Knoblauch Lichtenstein, who, on seeing Mr. Biebinger's (the cashier) signature, said they knew him, and asked the price of the bill. The price was then agreed upon and the transaction closed.

49 JOHN HUDSON, sworn and examined on the part of the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. State your name, residence, and occupation.

A. My name is John Hudson; I reside in St. Louis, and am in the cotton pickery business.

Q. How long have you been in the cotton pickery business?

A. About 7 years.

Q. Where is your place of residence?

A. 146 Barry St.

Q. Please state to the jury what a cotton pickery is.

A. It is to overhaul damaged cotton and rebale cotton—separate the grade of cotton.

Q. Are you acquainted with the cotton business in the city of St. Louis and the methods of carrying it on?

A. Yes, sir.

Q. How many cotton warehouses are there in St. Louis?

A. Two, I believe.

Q. How many were there in the spring and summer of 1882?
A. Three.
Q. Tell the jury what they were.
A. The St. Louis Cotton Compress Co., Peper's Compress Co., and the Factors' and Brokers' Compress Co.
Q. Are you acquainted with the plaintiffs in this case, McLeod & Reid, of Glasgow, Scotland?
A. No, sir.
Q. Are you acquainted with the defendant, The Fourth National Bank, or any of its officers?
A. Yes, sir.
Q. Do you know Mr. Biebinger, cashier?
A. Yes, sir.
Q. And Mr. Block, president.
A. Yes, sir.
Q. Did you ever have any business transactions with Mr. Block?
A. Yes, sir.
50 Q. Of what character?
A. I have had notes discounted at the bank.
Q. Have you been a depositor there?
A. Yes, sir.
Q. Were you transacting any business with them in the spring and summer of 1882?
A. Yes, sir.
Q. Were you acquainted with any of the members of the firm of Norvell, Camfield & Co.?
A. Yes, sir.
Q. How long have you known them?
A. I have known Mr. Norvell a great many years.
Q. How about Mr. Camfield?
A. I have known him since 1873.
Q. Do you know whether or not that firm was doing business in St. Louis in the summer of 1882?
A. Yes, sir.
Q. What kind of business? Explain to the jury.
A. They were cotton brokers, or cotton buyers.
Q. Explain to the jury, so they will understand as you do the business of a cotton buyer.
A. I don't know anything in the world except he buys his cotton; I don't know what use he puts it to.
Q. That is all the business you have with them; are you familiar with the form of cotton notes used in the trade in St. Louis?
A. Yes, sir.
Q. By whom are those notes issued?
A. Issued by the warehouses.
Q. And how are the notes issued in reference to the number of bales of cotton?
A. Each note represents a bale of cotton.
Q. Please examine these forms I show you, and state whether or not they represent the form of cotton notes in use in the St. Louis market.

A. Yes, sir.

(Form of cotton note shown to the witness. This don't
51 purport to have any connection with the case only as showing the form.)

The COURT: Are they negotiable in that form?

Mr. JUDSON: Yes, sir; I will read them to show the court a specimen: "St. Louis Cotton Compress Co., St. Louis." Then follows the date in this case. In the corner is the number.

Q. What does this number in the corner of the note you have identified represent?

A. It represents the bale of cotton.

Q. What relation has that to the cotton tag attached to the bale of cotton, a specimen of which you see on the table?

A. It represents the same number that is on the bale of cotton.

(Reads:) "Number of bale. Received in store of — one bale of cotton, in apparent good order, of the above number and following marks." Then follow the marks. "Deliverable to bearer upon the return of this receipt and payment of warehouse charges, risk of fire excepted. (Signed) —— ——, secretary." On the back is stamped or printed the words "Cotton note."

Q. Now state whether or not, in the winter and spring of the year 1882, you overhauled and rebaled any bales of cotton for the firm of Norvell, Camfield & Co.

A. I did.

Q. Can you state how many, what dates, and what you did with them?

A. Somewhere near a thousand bales; I think about a thousand bales.

Q. Have you the dates—the memoranda?

A. The memorandum is on that paper (producing memorandum); March and April I overhauled most of it.

Q. What year?

A. 1882.

52 Q. Explain to the jury what was done with the cotton.

A. The grades were separated—the different grades separated—and placed together. They are what they call rejected cottons, and there were two or three grades in a rejected bale. Those grades were separated and put together, each grade to itself.

Q. What is the average weight of a bale of cotton in the St. Louis market?

A. It averages different every year, I believe; about 500 pounds this year.

Q. How was it in the cotton year of 1881–'82?

A. From 460 to 500.

Q. You mean 460 to 500 pounds per bale?

A. Yes, sir.

Q. What is the cotton year in St. Louis; when does it commence and end?

A. The first of September it commences, and ends the 31st of August, I believe.

Q. Tell the jury in what condition were those bales of cotton you overhauled for Norvell, Camfield & Co., when they were received by you, as to weight.

A. They were in good order and good condition.

Q. What as to weight; were they average weight or not?

A. Yes, sir; average weight.

Q. From what place did you receive them?

A. I received them from the St. Louis Cotton Compress Co.

Q. Now, tell the jury what you did with those bales in the process of overhauling them, and what was their condition as to weights when those bales were returned, and how they were returned.

A. I received the cotton. I would open about 10 bales and separate the grades, and put the different grades together and return them to the warehouse under the same number. I couldn't return all the cotton that I received in the bales, because I
53 could not make them a merchantable bale and put them in shape, weighing as much as they did. When they were returned they did not weigh, within about 120 to 130 pounds per bale, as much when I received them as when I sent them back.

Q. What do you mean when you say they did not weigh as much when you sent them back?

A. When I sent them back they did not weigh as much as when I received them by about 120 or 130 pounds.

Q. Tell the jury what was done with the excess.

A. The excess was baled in the same manner and sent to the Factors' and Brokers' warehouse.

Q. How did the number of bales returned by you to the St. Louis Factors' and Brokers' warehouse compare with the number of bales received by you originally from the St. Louis warehouse?

A. The excess on about a thousand bales was 300 to 400.

Q. If you received 1,000 bales you returned to the warehouse between 1,300 and 1,400 bales?

A. Yes, sir.

Q. Did you say from what warehouse you received the cotton?

A. Yes, sir.

Q. Which one?

A. The St. Louis Cotton Compress Co.

Q. All of it?

A. Yes, sir.

Q. Now, explain to the jury whether all those bales of cotton that you received from the St. Louis warehouse had attached to them a tag or not.

A. Yes, sir; they did.

Q. Examine this package of tags and state whether these are the class of tags that were attached. (Package of tags attached to the depositions of McLeod and Reid shown to the witness.)

A. Those are the same kind of tags that were on the bales.

54 Q. Now, when the bales of cotton went back to the St. Louis Cotton Compress Co., what, if any, tags were on those bales which went back to the St. Louis Compress Co.?

A. The same that came over with them.

Q. State whether or not in the new bales of cotton made from this excess in this overhauling, which you say was sent to the Factors' & Brokers' Compress, whether any tags were attached to those bales when they went to that warehouse.

A. I attached none to them at all: the warehouse attached the numbers to them after they received them.

Q. And the tags?

A. Yes, sir.

Q. When this cotton was first brought to you, were the cotton notes brought to you?

A. No, sir.

Q. Did you ever see or have anything to do with the cotton notes?

A. I had nothing to do with them at all and never saw them.

Q. By whose orders did you do this way?

A. Messrs. Norvell, Camfield & Co.'s.

Q. What member of that firm was in charge of it?

A. I think Major Camfield was in charge.

Q. Do you know where Major Camfield is now?

A. No, sir; I do not.

Q. Is he in St. Louis?

A. I don't think he is.

Q. How long since he has lived in St. Louis, do you know?

A. No, sir; I do not.

Q. Is he doing business in St. Louis now to your knowledge?

A. I don't think he is.

Q. When did you see him last?

A. I saw him in the latter part of 1882, I think.

By a JUROR:

Q. I would like to ask the witness if it is customary to put back the tag that represents 450 to 500 pounds on a bale that weighs 300 to 400?

55

A. The tag don't represent the weight at all, or grade of cotton; just to identify the bale according to the note issued for it.

Q. So the same note that represents any bale of this cotton in the St. Louis Cotton Compress Co. before it was sent to your pickery continued to represent it after it had gone back?

A. The same thing; yes, sir.

A. There was no other or different note issued for it?

A. No, sir; no other; the same note—that is, I suppose it was.

Q. And, as far as you know, the same tag remained upon it?

A. Yes, sir.

Mr. JUDSON: Now, as to this cotton, the new bales that went to the Factors' & Brokers' Compress Co., were any notes outstanding for this before they went to that press?

A. I don't think there was, sir.

Q. If there were any notes they were then issued by that press, were they not, on the receipt of that cotton?

A. I suppose so.

By the COURT:

Q. At whose instance did you send this to the other compress company?

A. Norvell, Camfield & Co's.

Q. They ordered it to be sent there?

A. Yes, sir.

Mr. JUDSON: Now, I wish you to examine these sheets of paper shown to you and state whether or not they represent the numbers and the weights of the bales as produced in that rebaling process. (Showing statement to witness.)

A. Yes, sir; this is my statement of the whole business; the first number represents the bale of cotton, the number of the bale of cotton, and the next is the gross weight, and the next the net weight, after it left my place.

56 Q. Now, if I understand you correctly, the first column on this sheet of paper represents the number of the bale of cotton as stated on the tag attached to the bale?

A. Yes, sir.

Q. And the second number represents the original weight of the cotton bale as it came to your pickery?

A. Yes, sir.

Q. And the third represents the weight of the bale of cotton after rebaling it, when that cotton bale with the same tag was returned to the warehouse; is that correct?

A. Yes, sir.

Q. Now, please state whether there is any statement there of what you did with the excess of cotton which you made in the new bales which went to the Factors' & Brokers' Co.

A. I marked and numbered them, and the new mark is on the first line and the number is on the second line—my numbers—and the last number is the weight; 352, the first bale, is the weight; that I sent back.

Q. So, there being no warehouse number of these new bales that went to the Factors' & Brokers' warehouse, you designated them by a number of your own?

A. Yes, sir.

Mr. JUDSON: I will note a few of these figures (reading from the list shown witness): Bale No. 106,473: original weight, 572; new weight, 346; bale 106,484: original weight, 523; new weight, 348; bale 107,306: original weight, 521; new weight, 339; bale No. 108,409: original weight, 457; new weight, 344; No. 109,056: original weight, 454; new weight, 334; No. 110,292: original weight, 527; new weight, 337; then follow the weights as given here.

By a JUROR:

Q. I would like to know from the witness why the bales — reweighed; why the amount wasn't put back in the same number of bales?

57 A. We cannot well do that and make the shape and a merchantable bale; in order to do that I would have to repack the cotton.

Q. In other words, it would have had to have gone through the compress?

A. Yes, sir.

By Mr. JUDSON:

Q. This paper headed "excess," I understand, relates to what you did with the cotton taken out of the original bales that went back to the St. Louis warehouse?

A. Yes, sir.

Q. The paper headed "excess" proceeds as follows: "B." What does that mean?

A. That is the letter I placed on the bale myself.

Q. For your own identification?

A. Yes, sir.

Q. I will read a few of these: "Excess B 23, weight 352; B 24, weight 348; B 26, 377; B 27, 337; B 29, 362; B 39, 346; B 31, 350; B 32, 362; B 33, 348."

The COURT: Is that weight footed up—the aggregate excess?

Mr. JUDSON: Yes, sir.

Q. Have you a statement now of the totals?

A. You will find those on those papers there.

Q. You mean your former deposition that you gave in another case growing out of these matters?

A. The weights are on that paper and any one can add them up.

Q. As I understand you, all the cotton that you received from the St. Louis warehouse was returned to Norvell, Camfield & Co.—that is, the aggregate of the bales returned by you gave the aggregate in weight of the bales received by you?

A. Yes, sir; to both places.

Q. Counting both places?

A. Yes, sir.

Q. Can you produce at the adjourned session, at 2 o'clock,
58 a statement of the numbers and dates of this overhauling—how much you did each day?

A. We did all that is on that paper; all of it.

Q. You mean this paper?

A. You will find it in my deposition.

Mr. JUDSON: But that is a deposition in another case?

The COURT: I gather from your reading that he has two columns on that paper, one the original amount and another that you claim is the amount that he sent to the Factors' & Brokers' warehouse; that will show how much went to the St. Louis Compress and how much to the other compress.

Mr. JUDSON: I was under the impression the witness had already done that.

Q. Do you remember about the time you finished all this work of rebaling?

A. It was in April.

Q. Of what year?

A. 1882.
Q. Where did you do this work; at what place?
A. 146 Barry St.
Q. In St. Louis?
A. Yes, sir.
Q. Did you have any conversation with any of the officers of the Fourth National Bank relative to this work you did on this cotton; and, if so, when?
A. I did, with Mr. Biebinger.
Q. At what time?
A. I think it was in May.
Q. What year?
A. 1882.
Q. Mr. Biebinger was then the cashier of the bank?
A. Yes, sir.
Q. State under what circumstances you came to see Mr. Biebinger.
A. Mr. Camfield told me he was called on for some margins, and that he wanted me to explain to the bank what I had to do.
Q. What you did to what?
A. To the cotton. I had occasion to go to the bank; had
59 some business with them, and I told Mr. Biebinger I wanted to state to him what I did to the cotton. He asked me what I did, and I told him in sending the cotton back I did not put as much in the bale——
COUNSEL: Speak up.
WITNESS: I told him the cotton did not weigh as much as it did when I received it, and then he asked me—he says, "Suppose you got two bales weighing a thousand pounds, you make three bales out of that;" and I told him, "That is about the way it was done."
Q. Where did this conversation take place?
A. At the bank.
Q. Was it during the business hours of the bank?
A. Yes, sir.
Q. About what time of day?
A. I don't recollect the time of day.
Q. Was anybody else present at the conversation?
A. I don't recollect of any one being present.
Q. What else, if anything, was said by Mr. Biebinger on that occasion relative to that?
A. Nothing at all but just what I told you about the conversation between Mr. Biebinger and myself.
Q. Did either of you take a piece of paper in that conversation to figure down a thousand pounds and divide it by three?
A. I think Mr. Biebinger put it down, but I am not certain or positive about that; I think he did—that he made a calculation.
Q. Was anything said as to the warehouse permitting the cotton to go out while the bank held notes for it?
A. He might have said something to some one else, but not to me.
Q. I mean in your presence.
A. I don't recollect whether he did or not.

Q. Did Mr. Biebinger say on that occasion——

Mr. FINKELNBURG: Suppose you ask what was said.

Q. Was anything said relative to his having been informed
60 on this subject?

A. No, sir; not that I know of. He never said anything to me further than what I have stated to you about it.

Q. Did you have any subsequent conversation with Mr. Biebinger about it?

A. No, sir.

Q. Or with any officer of the bank?

A. I had a conversation with Mr. Block. Mr. Block asked me how I got the cotton from the warehouse and I told him on orders from Norvell, Camfield & Co.

Q. Do you mean Mr. Block, the president of the bank?

A. Yes, sir.

Q. Was that conversation before or after the conversation you have described with Mr. Biebinger?

A. After.

Mr. JUDSON: To expedite matters I have a statement made by the witness in another deposition giving the dates, the amounts, and the numbers of bales received. Of course, if there is any objection to his refreshing his memory with it I can have him look the matter up.

The COURT: Mr. Hudson, do you know who held these cotton notes before the bales went to your place to be assorted?

A. I do not, sir.

Q. Did the officers of the bank say anything to you on that subject?

A. Nothing at all, sir.

Mr. JUDSON: It will appear they held the cotton notes; it don't appear they held the cotton notes when it went to his place.

The COURT: That is what I wished to get at.

Q. When was that conversation with Mr. Block, before or after suit was brought?

A. Some time afterwards.

Q. After the suit was brought?

A. Yes, sir.

Mr. FINKELNBURG: That ought not to be in testimony in
61 this case, that conversation with Mr. Block.

Mr. JUDSON: We make no claim on the conversation with Mr. Block; we don't care anything about Mr. Block's conversation.

Q. I will show you the statement purporting to have been made by you in a deposition as to the dates of the receipt of these bales for repicking and rebaling; examine it and state whether or not it is correct.

A. I guess it is correct.

By the COURT:

Q. When were they received, can you remember?

A. I can only recollect from these dates: November 2nd, 1881, 16

bales; November 8th, 1881, 20 bales; November 9th, 1881, 24 bales; November 15th, 1881, 39 bales; November 16th, 1881, 56 bales; November 18th, 1881, 24 bales; November 22, 1881, 45 bales; then March 9th, 121 bales; March 11, 83 bales; March 14, 125 bales; March 22, 116 bales; March 27th, 54 bales; March 30, 60 bales; April 3, 114 bales; April 3th, 9 bales; April 10, 182 bales; April 24, 76 bales.

Q. What is the aggregate?

A. I haven't it.

Q. Is it added up there?

A. No, it is not here.

The COURT: Have you made a comparison with your memorandum on the book of this lot of cotton received by you; have you compared them to identify, to show, that it is the same lot we are talking about?

A. No, sir; I never did.

Mr. JUDSON: It is stated here there were 1,096 bales in 1882 and 224 in 1881.

WITNESS: Well, I guess that is correct. I suppose it is correct. Any one can add it up and see.

Q. Now, these papers that have been shown in evidence giving the details of this matter, do those represent the bales which you have just stated were received in 1882?

A. Yes, sir.

62 Q. Or those received in 1881, also?

A. No; those in 1882.

Q. Received in March and April, 1882?

A. Yes, sir.

Plaintiffs offered and read in evidence the statement prepared by witness showing the number and weight before and after rebaling of each of the bales rebaled by him for Norvell, Camfield & Company in March and April, 1882, said statement showing that 1,085 bales were received from the St. Louis Cotton Compress Company warehouse of aggregate weight of 558,704 lbs., making an average weight per bale of 514 lbs.; that the aggregate weight of the same bales as returned to the same warehouse, after being overhauled and and rebaled, was 376,512 lbs., making an average weight per bale of 347 lbs.; that the number of "excess" bales made out of the cotton taken from the original bales and sent to the Factors' & Brokers' warehouse was 514 of aggregate weight of 178,074, making an average per bale of 325 lbs.

Cross-examination by Mr. FINKELNBURG, for the defendant:

Q. Mr. Hudson, where is your pickery?

A. 146 Barry St.

Q. How far is that from the Cotton Compress Co.?

A. About a block.

Q. Are there many cotton pickeries in this city?

A. Yes, sir.

Q. How many?
A. I think there are three others.
Q. Were there others in the year 1882?
A. Yes, sir.
Q. You say there were four besides your own?
A. Yes, sir; I think four.
Q. All engaged in the same business of grading, classifying, and repicking cotton?
A. Yes, sir.

Q. Was that a thing that was going on at 4 to 5 different
63 establishments?

A. I don't know whether it was going on at any other establishment or not.
Q. But there were four other establishments besides your own?
A. Yes, sir.
Q. When you began to repick cotton for Norvell, Camfield & Co., who requested you to do it?
A. Major Camfield; in the presence of Mr. Norvell.
Q. That was in 1881?
A. I think it was in 1881.
Q. Did you ever pick any cotton for them before that time?
A. I don't think I did, sir.
Q. You say you knew Mr. Norvell for a series of years?
A. Yes, sir.
Q. How long had you known Major Camfield?
A. I was introduced to him here in 1873.
Q. Did you know the third partner, Mr. C. Eimer?
A. I did not.
Q. How long had Norvell, Camfield & Co. been doing business here as a firm?
A. I don't recollect the date they commenced business.
Q. They were cotton buyers, you say?
A. Yes, sir.
Q. Did they do a large business?
A. I don't know the extent of their business.
Q. Now, whatever they asked you to do in connection with their business you attended to?
A. Yes, sir.
Q. You have already been asked by the court, but I will ask again, whether at the time you did this repicking you knew who held the cotton notes?
A. I did not.
Q. Well, did any one connected with the Fourth National Bank speak to you about the repicking of the cotton while it was going on?
A. No, sir.

Q. Did you have any communication with any officer of
64 the bank concerning that matter during that time?

A. I do not remember.
Q. You have stated that you finished this lot of cotton in April, 1882?

A. Yes, sir.

Q. And up to the time when you finished you had no communication whatever with the Fourth National Bank or any of its officers or employees on that subject?

A. Not on the subject of Norvell, Camfield & Co.'s cotton.

Q. I understand you had business of you own, being a depositor there yourself?

A. Yes, sir.

Q. And up to the time when you completed the repicking of this lot of cotton you had no communication whatever with the Fourth National Bank or any of its officers or employees concerning that transaction?

A. No, sir.

Q. And, so far as you are aware, they had no knowledge on the subject whatever?

A. I don't know anything about that.

Q. I say, as far as you are aware, they had no knowledge; as far as you know anything about it, they had no knowledge?

A. No, sir.

Q. Now, in May, 1882, you spoke to Mr. Biebinger about this cotton?

A. Yes, sir.

Q. How did you come to go there?

A. Major Camfield sent me word they had called on him for margins, and he wanted me to go to explain to Mr. Biebenger what I did to the cotton.

Q. Well, then, you went at the instance of a member of the firm of Norvell, Camfield & Co.?

A. I went at my own instance, for the simple reason that I wanted to place myself right with the bank, because I was doing business with the bank.

65 Q. But the suggestion came from Major Camfield?

A. Yes, sir.

Q. He wished you to go to the bank?

A. Yes, sir.

Q. He wished you to go there?

A. That is what he asked me to do.

Q. Then you certainly did not go to the bank for the purpose of alarming the bank in any way, but rather to quiet things, didn't you?

A. I went there to let them know exactly what I did with that cotton. I understood there would be some trouble about the cotton, and I went there to let them know all about it.

Q. Was any number of bales mentioned in that conversation?

A. No, sir; I don't think there was.

Q. You did not tell Mr. Biebinger whether you had repicked 100 or 1,000 bales of cotton?

A. No, sir.

Q. The information simply was that some of the cotton had been repicked by you?

A. Yes, sir.

Q. That is not an unusual thing, is it, in the cotton business?
A. No, sir; I should think not.
Q. You have spoken about the average weight of a bale of cotton. Mr. Judson has asked you what was the average weight in 1882, and you said about 460 to 500 pounds?
A. Yes, sir.
Q. At present you say it is 500?
A. Take it as it runs, 500 pounds this year, or over.
Q. Now, there is also a weight known as merchantable weight, isn't there?
A. Yes, sir.
Q. What is that?
A. 300, or over 300.
Q. Whatever is over 300 pounds is bound to be accepted by the purchaser?
A. Yes, sir.
Q. So that bales of cotton may vary all the way from 300 to 500 pounds in weight and yet be merchantable?
A. Yes, sir.
Q. Do you know when Mr. Norvell went to Europe?
A. No, sir; I do not recollect the date.
Q. Do you know whether, at the time when you had this conversation with Mr. Biebinger, the margin which had been called for had already been paid by the firm of Norvell, Camfield & Co.?
A. No, sir; I don't know anything about that part of it.
Q. Major Camfield simply told you that they had called for a margin?
A. Yes, sir.
Q. Now, outside of that one conversation with Mr. Biebinger, in which you did not state to him the quantity of cotton which you had repicked, you had no further conversation with him whatever?
A. No, sir; none whatever.
Q. Nor with any officer of the bank until after this suit was brought?
A. Yes, sir.
Q. And then Mr. Block asked you about some information?
A. Yes, sir; Mr. Block asked some question how I got the cotton.
Q. When you had your conversation with Mr. Biebinger did you know what cotton notes the Fourth National Bank then held?
A. No, sir; I did not.
Q. Either the number, quantity, or anything in relation to this transaction with Norvell, Camfield & Co,?
A. None whatever.
Q. Did you know whether or not they held the cotton notes for the bales which you had repicked?
A. No, sir; I did not.

Redirect examination by Mr. JUDSON for plaintiffs:

Q. You have spoken of a merchantable bale of cotton. What do you mean by that?
A. Anything over 300 pounds is a merchantable bale of cotton.

Q. You mean by that it may be tendered on contract; is that it?

67 A. I don't understand about the contract part of it; I know if you purchase a bale of cotton and it weighs over 300 pounds the broker is compelled to take it.

Q. And how is it paid for—by what, by the bale or pound?

A. By the pound, I guess.

Q. You mean by that if it comes less than 300 the man is privileged to refuse to take it at all; is that it?

A. Yes, sir.

By the COURT:

Q. For the convenience of handling, I suppose?

A. Yes, sir.

Mr. JUDSON: If they tender less than 300 pounds it is the same as if they tendered another quality.

Q. Did you know in the spring before you saw Mr. Biebinger, where Norvell, Camfield & Co. were doing their banking business?

A. Only from checks they gave me.

Q. Where were they?

A. They gave me checks on the Merchants' National Bank and on the Fourth National Bank.

Q. When Mr. Camfield told you the bank had called on him for margins, did he tell you on what they had called for margins?

A. No, sir.

Q. He just said they had called for margins?

A. Yes, sir.

Q. Did he say how much margin?

A. No, sir; he did not say.

By the COURT:

Q. Can you remember back in the early part of 1882 about cotton rising in the market in value or declining along in March, April, and May?

A. I think in April and May; I think cotton was up May or June.

The COURT: It only has reference to calling for margins.

Mr. JUDSON; We will show the facts about that.

68 L. C. NORVELL, sworn and examined for the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. State your name and residence.

A. My name is L. C. Norvell; I reside in St. Louis.

Q. What is your business?

A. I am a cotton buyer.

Q. What business were you engaged in in the spring and summer of 1882?

A. Cotton buying.
Q. Of what firm were you a member?
A. Norvell, Camfield & Co.
Q. Who composed that firm?
A. L. C. Norvell, C. H. Camfield, and Charles J. Eimer.
Q. How long did that firm as thus constituted continue business?
A. From May 1st, 1881, to May 1st, 1882.
Q. What change was then made?
A. Mr. Eimer withdrew.
Q. Who continued in the firm after that time?
A. C. H. Camfield and myself.
Q. How long did that firm continue in business?
A. Until September, 1882.
Q. Do you know the plaintiffs, McLeod and Reid, of Scotland?
A. I do.
Q. Do you know the defendant, The Fourth National Bank?
A. I do.
Q. Do you know its officers, Messrs. Block and Biebinger?
A. I do.
Q. Did your firm of Norvell, Camfield & Co. have any business relations with the Fourth National Bank in the spring and summer of 1882?
A. We did.
Q. Of what character, if you know?
A. We sold them bills and borrowed money from them on our notes with cotton pledged as collateral.
69 Q. Do you know of a shipment of cotton being made to McLeod & Reid, of Glasgow, Scotland?
A. I do.
Q. State whether or not the cotton shipped to them was pledged to the Fourth National Bank prior and at the time of such shipment?
A. It was.
Q. Do you remember the amount of that shipment?
A. 600 bales.
Q. Where were you during the spring and summer of 1882?
A. I left here the last of April, and went to Europe, and returned about the last days of July.
Q. You mean July, 1882?
A. Yes, sir; I left in April and returned in July.
Q. I submit to you certain papers. I will ask you first by whom was the business of your firm with the Fourth National Bank transacted?
A. C. H. Camfield.
Q. Please examine these collateral notes now shown to you and state whether or not those are the notes of your firm, if you know?
A. Yes, sir; those are the firm notes of Norvell, Camfield & Co.
Q. By whom are they signed?
A. One of them is my own.
Q. One is signed L. C. Norvell?
A. Yes, sir.

Q. That is your signature?
A. Yes, sir.
Q. By whom were these signed?
A. Norvell, Camfield & Co.; signed by Mr. Camfield.
Q. Do you know his handwriting?
A. I did.

Note referred to offered in evidence, as follows:

ST. LOUIS, MO., *April 1st*, 1882.

Sixty days after date I promise to pay to the order of Nor-
70 vell, Camfield & Co. $600, for value received, negotiable and payable without defalcation or discount.

(Signed) L. C. NORVELL.

"Having executed my note as above, and being desirous of securing the same, as all other liabilities for which I am now bound, and until the maturity of said note, I do hereby pledge as collateral security therefor one certificate of membership—No. 309—of the St. Louis Cotton Exchange, and one certificate of membership of the Merchants' Exchange of the city of St. Louis, with power to transfer, etc., signed by me." Then follows the printed form of the collateral note, signed L. C. Norvell.

Q. Were those your certificates of membership?
A. They were mine, sir.
Q. On what occasion did you execute this note?
A. Just before going to Europe I borrowed that money to leave with my family.
Q. Of whom did you borrow it?
A. Of the Fourth National Bank.

Witness then identified the following demand notes signed by Norvell, Camfield & Co., and payable to the Fourth National Bank, all demand notes bearing interest at 8 per cent. per annum, and which were read in evidence as follows:

One note of date March 20, 1882, for $13,000, with 275 cotton notes as collateral, with credits on back of date May 27; interest paid $196.45, and payment on account $1,000.

One note of date March 22, 1882, for $3,285, with 73 cotton notes as collateral, with credit endorsed, of interest $48.18 on May 27, and $1,000 on account.

One of date March 30, 1882, for $9,000, with 200 cotton
71 notes as collateral (85 in the warehouse of the St. Louis Cotton Compress Co. and 115 in that of the Factors' & Brokers' Co.), credited with interest paid on May 26 and on May 27 $1,000 on account.

One of date April 18 for $14,600, with 325 cotton notes as collateral, with credit of interest paid May 27, $126.53, and on June 2, on account, $1,500.

One of date April 26 for $12,500, with 313 cotton notes as collateral, with interest credited May 27, $86.11, and on May 30, on account, $700.

One of date April 26, 1882, $3,465, with 77 bales of cotton as collateral, with credit of interest paid May 27, $23.87, and on May 27, on account, $700.

One of date May 30, 1882, for $950, with 10 cotton notes as collateral (Factors' & Brokers' Cotton Compress Co.) and one membership certificate of the Merchants' Exchange of St. Louis and one membership certificate of the Cotton Exchange of St. Louis.

One of August 4, 1882, for $22,735, with 572 cotton notes as collateral (of Factors' & Brokers' and St. Louis Cotton Compress Co.) and one membership of Merchants' Exchange of St. Louis and one of Cotton Exchange of St. Louis.

Q. Mr. Norvell, were you in St. Louis at the time this last note was given, August 4th, 1882?

A. Yes, sir; I was.

Q. Does this note represent a new loan made at that time or a consolidation of prior notes?

A. A new loan or consolidation—I am not certain which; it must have been a consolidation; I think it was.

Q. What was done, then, with the prior notes or your prior
72 notes given to the bank?

A. They were paid. That was the last note. The only note we had in the bank was the $22,000 note.

Q. If I understand you correctly, when the note of August 4th, 1882, was given your prior notes to the bank were taken up?

A. All paid.

Q. And this note was given in lieu thereof?

A. Yes, sir.

Q. Was this last note ever paid, of August 4th?

A. Yes, sir.

Q. From what was it paid?

A. By exchange on New York against shipments of cotton.

Q. Please examine the book I now show you and state what it is, if you know.

A. This is the bank-book of Norvell, Camfield & Co. with the Fourth National Bank.

Q. Were any other shipments of cotton made from cotton in the hands of the Fourth National Bank pledged by your firm aside from this one to McLeod & Reid?

A. Yes, sir.

Q. To what parties?

A. To J. E. Smith and S. E. Smith, of Liverpool, and to Inman, Swann & Co., of New York.

Q. After these several shipments were made and the cotton all disposed of state what was done with the proceeds.

A. The proceeds was paid to the Fourth National Bank in liquidation of our indebtedness to them.

Q. State whether or not your indebtedness was paid in full, principal and interest, or not.

A. Every cent, principal and interest.

Q. State whether or not there was any balance left remaining after the Fourth National Bank was paid, principal and interest.

A. Yes, sir; there was several thousand dollars balance.

Q. What became of that several thousand dollars balance?

A. Mr. Camfield checked it out.

73 Q. When did he check it out?

A. A few days before he left St. Louis.

Q. When did he leave St. Louis?

A. About the 6th or 7th of September.

Q. Do you know whether or not the news had reached St. Louis of the discovery of the condition of this cotton abroad before the balance of this money was drawn out of the bank?

A. I do.

Q. What was the fact?

A. About the first of September Mr. George Bain came to me on the Cotton Exchange——

Q. You need not state any conversation had with any other parties; just confine yourself to the simple fact whether the news had reached here.

A. Yes; I was going to tell how it got here, but still—well, yes, I had the information about the first or second of September—I disremember which day—that these cottons had arrived, and that they had lost about 20 or 25 per cent. in weights—a cable dispatch from Glasgow, from McLeod & Reid.

Q. Mr. Norvell, who attended to the shipment of this cotton to McLeod & Reid?

A. Mr. Camfield attended to all the shipments.

Q. Where were the cotton notes for this cotton that was shipped to McLeod & Reid?

A. They were at the Fourth National Bank.

Q. Did you personally have anything to do with this shipment?

A. Nothing whatever.

Q. Did you know at the time what statements were contained in the bills of lading, as to the weights?

A. Nothing whatever.

Q. Or as to the value placed in the certificate of insurance?

A. Nothing.

Q. Did you have anything to do with preparing the certificates of weights that were sent along with the invoices of that

74 shipment?

A. Nothing; that shipment was made before I arrived home.

Q. What date did you arrive home?

A. About the 27th or 28th of July; that was then sold and going off, and the 500 bales to S. E. Smith was being shipped when I arrived.

Q. Do you recognize the signatures to that bill of exchange attached to the deposition of Mr. McLeod?

A. I do.

Q. Whose is it?

A. It is Mr. Camfield's, of Norvell, Camfield & Co., signed by him.

Q. Do you know where that draft was made?

A. Made here in St. Louis.

Q. Was it made at your office, the office of Norvell, Camfield & Co., or at the office of the bank, if you know?

A. He may have made it in our office and carried it to the bank. I take it for granted he did. That was the usual way of doing the business.

Q. Examine the sight draft for $29,010 on Knoblauch & Litchtenstein.

A. Yes, sir; that is Norvell, Camfield & Co.'s draft, drawn by Mr. Camfield.

Q. Do you know where that was done?

A. That was drawn in the office.

Q. What office?

A. Ours.

Mr. JUDSON: I now show the witness this statement showing the daily balances of the firm of Norvell, Camfield & Co. with the bank.

Q. You have been shown a sight draft for July 25, 1882, for $29,010; what became of the proceeds of that sight draft?

A. It went on our balance to the Fourth National Bank.

Q. When you say it went to your balance——

A. Went to our credit.

75 Q. Do you know how much you were indebted to the bank at that time?

A. I suppose at that time we must have been indebted to the bank about $70,000—between $60,000 and $70,000.

Q. By what was that indebtedness then existing to the bank secured?

A. By cotton notes.

Q. Well, what cotton notes secured it?

A. Cotton notes of the St. Louis Cotton Compress Co. and the Factors' & Brokers' Press and other presses.

Q. State whether or not that was the cotton that had been shipped to McLeod & Reid?

A. This was the cotton.

Q. Then, if I understand you correctly, the proceeds of that sight draft went to pay your indebtedness to the bank secured by the cotton that was shipped to McLeod & Reid?

A. Yes, sir.

Q. What was the financial condition of the firm of Norvell, Camfield & Co. on the 7th of September, 1882?

A. On the 7th of September, 1882, they were financially busted, but when I left here on the first of May, 1882, I left $5,000 or $6,000 to my credit in the bank and no debts that I knew of.

Q. You mean personally or the firm?

A. The firm.

Q. State whether or not that condition of Norvell, Camfield & Co. has changed since that date for the better?

A. Oh, the developments of this shipment, you know, show their condition; we owe losses that we could not pay and consequently establishes——

Q. Did you owe anything to the Fourth National Bank after the 7th of September?

A. Not a dime.

Q. I show you this statement of the daily balances of Norvell, Camfield & Co. with the Fourth National Bank. Can you take that paper and state from that?

A. Where do you begin?

76 Q. Probably you may find some difficulty with it.

A. Well, I can't tell you what the balances were at any day, for I didn't keep the account, and I can't answer that question.

Q. You would simply know from examining that paper, then?

A. That is all.

Mr. JUDSON: The paper in question is offered in evidence—statement of the daily balances of Norvell, Camfield & Co., commencing January 1st, 1882, to October 28th, 1882.

Same was admitted by defendant to be correct, and is as follows:

Date.	Items.	Am't Dr.	Am't Cr.	Balance.
1882.				
Jan'y 1	By balance			1,471 45
3	To c'k	1,026 28		445 17
4	"	35		410 17
5	"	10		400 17
7	"	10		390 17
"	Balance	390 17		
	30 vouchers ret'd	54,027 48	54,027 48	
	By balance		390 17	390 17
9	To c'k	26 50		363 67
10	"	18 25	350	695 42
11	"	14 25		681 17
12	"	127 31		553 86
13	"	110 93		442 93
14	"	30		412 93
17	"	401 31		11 62
"	Balance	11 62		
	13 vouchers ret'd	740 17	740 17	
	By balance		11 62	11 62
21	To c'k	25	50	36 62
23	"	60	75	51 62
24	" dep. C. H. Camfield, for N., C. & Co.		350	401 62
25	"	98 15		303 47
26	" dep. at Chatham, b'k let., 1-25-'82	1,173 61	1,000	129 86
28	"	25 50		104 36
31	"	73		31 36
Feb'y 3	" cash	24 40	50	56 96
6	" dep. at Chatham, b'k L., 2-4-'82	81	500	475 96
"	"	35 00		440 96
8	" call loan	28,566	28,500	374 96
10	"	125		249 96
11	"	100		149 96

Date.		Items.	Am't Dr.	Am't Cr.	Balance.
1882.					
Feb'y	13	To c'k ex. m't'g	177 55	28,158 80	28,131 21
	14	"	28,538		406 79
	16	"	10		416 79
	17	" at Chatham, 7 b'k let., 2-17-'82		500	83 21
	21	" call loan		250	333 21
	24	"	81 57		251 64
	27	"	180		71 64
M'ch	2	"	50		21 64
	3	" cash	40	50	31 64
	4	"	27		4 64
	6	"		70	
	"	"	50	1,000	1,024 64
	7	" by cash	105 80		918 84
	8	"	70		848 84
	11	" "	25	1,500	2,323 84
	13	" "	8,143 27	8,480 87	2,661 44
	14	" call loan	7,479 23	8,600	3,782 21
	15	"	385		3,397 21
	16	"	54		3,343 21
	18	" cash	481 15	2,500	5,359 06
	20	" call loan		13,000	18,359 06
	"	"	14,547 06		3,812
	22	" cash		16,241 81	
	"	" call loan	18,005 94	3,285	5,332 87
	23	"	232 24		5,100 63
	24	"	50		5,050 63
	28	"	110		4,940 63
	29	"	9 50		4,931 13
	30	" call loan	7,753 87	9,000	6,177 26
	31	"	1,021 45		5,155 81
Apr.	1	"	301 71		4,854 10
	3	"	25		4,829 10
	4	"	50		4,779 10
	5	"	49 50		4,729 60
	6	"	75		4,654 60
	7	"	976		3,678 60
	8	" cash	60	100	3,718 60
	10	"	210		3,508 60
	11	"	104 40		3,404 20
	12	"	167 60		3,236 60
	14	"	272 09		2,964 51
	18	" call loan	14,989 06	14,600	2,575 45
	21	"	135		2,440 45
	26	" call loan		3,465	
	"	" do.	12,758 67	12,500	5,646 78
	27	"	25		5,621 78
	29	"	100		5,521 78
May	1	"	338 80		5,182 98
	2	"	815		4,367 98
	3	"	230		4,137 98
	4	"	26		4,111 98
	5	"	50		4,061 98
	6	"	10 90		4,051 08
	12	"	258 75		3,792 33
	15	"	190		3,602 33
	20	"	11		3,591 33
	22	"	22 50		3,568 83
	24	"	35		3,533 83
	25	"	50		3,483 83
	27	"	3,438 56		45 27

Date.	Items.	Am't Dr.	Am't Cr.	Balance.
1882.				
May 30	To c'k, cash		750	
"	" call loan	1,700	950	45 27
June 2	" cash	1,500	1,500	45 27
6	"	26		19 27
12	"	13,195	14,635 35	1,459 62
13	"	7 15		1,452 47
14	"	45 45		1,407 02
15	"	15		1,392 02
17	"	100		1,292 02
19	"	8 10		1,283 92
21	"	919 79		364 13
22	"	100		264 13
23	"	72		192 13
28	"	32 40		159 73
29	"	20 95		138 78
30	"		300	438 78
July 1	"	10		428 98
3	"	221 75		207 03
5	"	98 05		108 98
6	"	20		88 98
10	"	16 50		72 48
11	"	11 60		60 88
12	"	20		40 88
13	"	9 30		31 58
17	"	11 25		20 33
19	"	25		4 67
"	" disc't		198 49	193 82
22	"	85 40		108 42
25	" 1st sh'pm't to England		28,973 74	29,082 16
26	" c'k N. Y. b'k	9,483 60		
"	" c'ks	16,124 76		3,473 80
27	" "	622 65		2,851 15
28	" "	1,753 75		1,0971 0
29	" "	146 38		951 02
31	" "	372 24		578 78
Aug. 1	" "	27		551 78
2	"	25		526 78
3	"	26		500 78
4	By cash		24,144 78	
"	" call loan	43,773 55	22,735	3,607 01
5	To c'k	115		3,492 01
"	" balance	3,492 01		
	185 vouchers ret'd	248,025 46	248,025 46	
	By balance		3,492 01	3,492 01
7	To c'k	562 29		2,929 72
8	"	58 85		2,870 87
9	"	303 40		2,567 47
10	"	1,100		1,467 47
11	"	160 15		1,307 32
12	"	45		1,262 32
14	"	200		1,062 32
15	"	5 25		1,057 07
16	"	23 10		1,033 97
17	"	5		1,028 97
18	"	20		1,008 97
19	"	85		923 97
21	"	8 15		915 82
22	"	210 85		704 97

Date.	Items.	Am't Dr.	Am't Cr.	Balance.
1882.				
Aug. 24	To c'k	55 96		649 01
26	"	79 85		569 16
28	" Inman & Co.	15	14,215 07	14,769 23
29	"	23,527 96	13,848 24	5,089 51
"	" cash	5,089 51		
	43 vouchers ret'd	31,555 32	31,555 32	
	By balance		5,089 51	5,089 51
30	To c'k	4 35		5,085 16
31	"	5 81		5,079 35
Sept. 2	"	604 07		4,475 28
4	"	441 40		4,033 88
5	"	157 25		3,876 63
6	"	3,585		291 63
7	"	294 63		3
Oct. 28	" Norvell & Co.		3 00	

O. K. HENRY J. CHOMTURK.

77 WITNESS: I know that we had no trouble of any kind at all through that year; paid everything that was presented.

Q. Here is a statement on the 7th of September, an overdraft of $3, paid on the 28th of October.

A. By me?

Q. You paid that $3?

A. Yes, sir.

Q. That balanced your account with the bank?

A. Yes, sir.

Q. There is a recital here of pledging certificates of membership first on this personal list of your own, April 1st, 1882. Whose membership certificates were those?

A. My own.

Q. So when you went to Europe you had your membership certificates in the Merchants' and Cotton Exchanges pledged to the bank?

A. Yes, sir.

Q. Did you ever get them returned from the bank?

A. Yes, sir.

Q. When was that paid?

A. I paid them about the latter part of August, when we closed out.

Q. That collateral was returned?

A. Yes, sir.

Q. Do you know whether or not Mr. Camfield's membership certificates were pledged?

A. Yes, sir; I learned so afterwards.

Q. I see a recital in one of the firm collateral notes of another certificate of membership in the Merchants' and another in the Cotton Exchange.

A. Yes, sir.

Q. Do you know whose that was?
A. Mr. Camfield's.
Q. Do you know whether he got his back?
A. Yes, sir; he did.
Q. By the payment of the notes?
A. Yes, sir.
Q. You spoke of having a balance in the bank on the first of May, 1882. Did you have any cotton notes pledged to the bank at that time?
A. Yes, sir; about $1,200 to $1,400.
Q. I understand you to say you were absent from the city from April 26th, 1882, to about July 26th?
78 A. Say from the first of May to the first of August will cover it. The last days of July I got home; I don't remember the date exactly.
Q. You were familiar with the cotton business?
A. I was.
Q. What was the average weight, as known, in the St. Louis market, of a bale of cotton in that cotton year?
A. I think that season cotton averaged about 450 to 490 pounds to the bale.
Q. Do you remember the course of values—the market value—of cotton during that year in the spring and summer of 1882?
A. Yes, sir.
Q. How was it; was cotton advancing or falling in value?
A. Cotton was pretty steady all through the spring and summer, and advanced in July and August.
Q. Was there any decline at any time during the spring and summer?
A. No decline.
Q. Whatever change there was was in the direction of an advance, then?
A. Yes, sir.
Q. How was it the last August and September in Europe, if you know?
A. In Europe in August the market was higher than in any other month in the year, and it began to decline in September, but about the 10th of September probably reached its highest point. Ater that it began to go off.
Q. How was it, say, the first week in September; how was the market?
A. The market was pretty strong.
Q. Stronger than it had been?
A. I don't know that it was any stronger than it had been, but about 7⅛ for middling; along there was about the highest point of the season, I think.
Q. Do you remember how the cotton crop was that cotton year of 1881–'2? Was it known as an abundant or short crop, as far as the American crop was concerned?
79 A. I think that was a fair crop—about six millions and a half, if I remember right.

Cross-examination by Mr. FINKELNBURG for defendant:

Q. How long have you been in the cotton business?

A. All my life.

Q. How long have you been in St. Louis?

A. Ten years.

Q. Had Major Camfield, your partner, been in the cotton business before he went into partnership with you?

A. I think he had been in business in the cotton business in Georgia on his own account. Three or four years before he went into partnership with me he clerked for me in this city. He afterwards went in the railroad business in May, 1881. May 1st he went into the railroad business. He was here connected with Mr. King in the railroad business for a couple of years after he left me.

Q. Then, he went in partnership with you?

A. On the first of May, 1881.

Q. Your other partner, Mr. Eimer, where was he from?

A. He was from Belleville, Illinois.

Q. A son of a wealthy citizen of Belleville, is he not?

A. Yes, sir; I believe one of the wealthy citizens over there.

Q. How is he related to Major Camfield?

A. Married his daughter.

Q. A son-in-law of Major Camfield?

A. Yes, sir.

Q. Did you do business with the Fourth National Bank from the time that the firm of Norvell, Camfield & Co. was originally organized?

A. Oh, two or three years before.

Q. Two or three years before; and this was not the first transaction, by any means, you had with the Fourth National Bank?

A. No, sir; Norvell & Co. had an account with them two seasons—Norvell & Williamson one year and Norvell & Camfield
80 two seasons.

Q. Did you have transactions with the bank during that time?

A. Yes, sir; I guess about a half a million a year; I reckon somewhere in that neighborhood.

Q. During all that time, and up to this transaction here in controversy, did you have any difficulties with the bank?

A. None whatever.

Q. None of any kind?

A. None of any kind.

Q. You met your obligations promptly?

A. Norvell & Co. paid all their obligations, bills, discounts, and notes; Norvell & Williamson did the same thing; Camfield & Co. did the same up to this transaction.

Q. So there were no business obligations at any time between yourself and the Fourth National Bank up to this time that were not promptly met?

A. None whatever.

Q. Your relations had been satisfactory and agreeable?

A. Altogether, so far as I was concerned.

Q. Well, as far as you know, it was the same in reference to your partners?

A. Yes, sir; I never asked them for money that they did not give it to me, and I always paid it when it was time.

Q. Now, in April, 1882, you concluded to go to Europe?

A. Yes, sir.

Q. For the purpose of extending your business connection?

A. That was my business—the object of my going there.

Q. You had some business connections there before, I believe, had you not?

A. Not for many years.

Q. I thought you were acquainted with the firm of Newgass & Co.?

A. I knew them in dealings; I had made them one or two shipments prior to that; not direct.

Q. The fact is you went to form new business connections in Europe?

81 A. That was the object of [my] going there.

Q. You called up there at the bank to get some kind of a letter of introduction for that purpose?

A. I did.

Q. That was in April, 1882?

A. Yes, sir.

Q. At that time—I will ask you again—there had been no complications and no trouble with the bank whatever?

A. None whatever that I ever heard of, and none whatever up to the time of my leaving home, and I never heard a word of it until after I arrived home and after all these things culminated.

Q. When you called on Mr. Biebinger you told him you were going to Europe and would like to have a letter. Did you have any other letters?

A. Yes, sir; I had a letter from the Merchants' Exchange and I had a letter from the Cotton Exchange.

Q. What became of those letters?

A. I gave them to Mr. Mackay at the same time I gave him the Fourth National Bank letter, on my return from Europe, to assist in cashing these drafts on Knoblauch & Lichtenstein.

Q. Now, the one letter of the Fourth National Bank has been produced in court, attached to one of the depositions. What has become of the other letters?

A. I gave them all to Mr. Mackay.

Q. As well as the letter of the Fourth National Bank?

A. Yes, sir.

Q. So that the letter of the Fourth National Bank, which is produced by the plaintiffs, must have come from Mr. Mackay?

A. I gave it to him with the other two.

On request of defendant's counsel plaintiffs' counsel here produces the other two letters.

Q. Look at these letters and state whether those are the letters you refer to?

A. Those are the letters.

82 Q. Will you read those to the jury?

Witness reads:

"ST. LOUIS, *April 27th*, 1882.

"This is to certify that Mr. L. C. Norvell is a member of the Merchants' Exchange of St. Louis in good and regular standing. Mr. Norvell is of the firm of Norvell, Camfield & Co., of this city, and visits Europe on business. We bespeak for him the courtesy and attention of all those who may meet him. Mr. Norvell is a gentleman of high standing in this community.

"GEORGE H. MORGAN, *Secretary*."

Q. And the seal attached of the Exchange, is it not?

A. Yes, sir.

Q. This other is from the Cotton Exchange of St. Louis, is it?

A. Yes, sir.

Q. Please read it.

Witness reads:

"ST. LOUIS, *April* 27, 1882.

"To whom it may concern:

"The bearer of this, Mr. L. C. Norvell, is about to proceed to Europe to establish business relations there. Mr. Norvell has been a member of this exchange from its organization, and is one of the oldest cotton men in the country, and is as well posted in the great staple as any man in the business. I have known Mr. Norvell personally for many years, and have always found him reliable, popular, and original (?), and fully recommend him to the courtesty of our friends on the other side.

"Very respectfully,

[SEAL.] "E. W. SIMMONS, *Secretary*."

"Mr. Norvell is a member of the firm of Norvell, Camfield
83 & Co., of this city. Mr. Camfield is also a member of this exchange."

Q. Now, Mr. Norvell, did you show these letters to Mr. Biebinger when you called on him?

A. I did; I think so. Mr. Camfield took up those letters and got me the letter, and afterwards I went to tell him good-bye; we were together when I went away and he gave the letters all back together and his own and this one to the Deutsche Bank in London.

Q. When did you arrive at Glasgow, Mr. Norvell?

A. About the 14th of May.

Q. Did you call on McLeod & Reid immediately?

A. Not until I returned. I sailed from there on the 7th of June and on my return, in the latter part of July, I made McLeod's and Reid's acquaintance.

Q. You did not call on them when you first arrived in Glasgow?

A. I did not.

Q. I suppose you landed at Glasgow?

A. I landed at Glasgow and went down to London.

Q. And then on your return you called on McLeod and Reid?

A. I stopped over a couple of weeks and made their acquaintance, and made this business relation.

Q. Did you show them these letters?

A. I did.

Q. You had several interviews with what member of the firm of McLeod & Reid?

A. Mr. McLeod principally, but both of them.

Q. Were your transactions with Mr. McLeod finished in one day or was it a protracted negotiation?

A. Oh, I was negotiating with him for two weeks.

Q. During that time did he make any inquiry from you as to your financial standing?

84 A. He said to me one day in a billiard room, "Now, we are going into some business together, and I want to know who we are and what we are worth. We are worth forty to fifty thousand pounds; what are you worth?" Says I, "Not a nickel." Says I, "You will have to find that out from somebody else. I never blow my own horn.;" "Well," he says, "I understand your firm is worth $50,000." "Well," says I, "You know more about it than I do."

Q. Do you know where he made those inquiries concerning your firm?

A. I do not.

Q. Well, was it after that that your transaction was closed—after this conversation?

A. Yes, sir; this was the fourth day of July we had this talk, and we closed our transaction on the 7th.

Q. Mr. Norvell, let me ask you whether during your entire stay in Europe you ever had any communication by letter or by cablegram with the Fourth National Bank?

A. Not a line.

Q. No communication between you at all?

A. None at all.

Q. Were you acquainted with the house of McLeod & Reid before you crossed to Scotland?

A. I never heard of them.

Q. Then of course the Fourth National Bank knew nothing about them?

A. Nothing in the world.

Q. Didn't you know you were going there?

A. No, sir.

Q. On your return, Mr. Norvell, after having disposed of a portion of your cotton, for I believe you did not dispose of all of it in Europe?

A. No.

Q. You disposed of part on your return in New York?

A. Yes, sir.

Q. To the firm of Inmann, Swann & Co?

A. Yes, sir.

Q. Now, when you returned and arrived in New York you
85 made some effort to negotiate the foreign bills which you expected to draw against the shipment of cotton you had disposed of in Europe, didn't you?

A. Yes, sir.

Q. State all about that and where you called first.

A. When I left Glasgow Mr. Reid gave me a list of the banks and bankers that were buying his exchange in New York.

Q. You mean Mr. Reid, of the firm of McLeod & Reid?

A. Of the firm of McLeod & Reid; he gave me a list of the bankers in New York that had been buying their exchange, and told me to call on any of them; that they knew the name and would buy the paper on the best terms. So when I arrived in New York and learned (there I got a letter from Mr. Camfield to negotiate to sell our 60-day bills in New York) that the bank would not buy them and make arrangements for him to draw — sight for the proceeds of those 60-day bills, I went to the Merchants' Bank of Canada, that being one of the names given me by McLeod & Reid, and they told me I was a stranger in the city and they would not open an account with a man living in St. Louis, outside of the city, but they recommended me to Mr. Mackay, and that is the way I found him.

Q. Who was Mr. Mackay?

A. He was an exchange broker. So I went down into his shop and told him I had been sent there by the Merchants' Bank, and told him that I wanted to negotiate 600 pounds on McLeod & Reid of Scotland. "Yes," says he, "I know them."

Q. You mean 600 or 6,000?

A. 6,000 pounds against 600 bales; and he went out to place it; but he came back in about an hour and told me he could not find
86 the man in, or something of the sort, and asked me if I had anything to help him place the exchange, as I was a stranger there and unknown—name not known on the streets. Says I, "Yes; I have got these to help me; just what helped me to make this negotiation. I have some letters here." And I pulled out the letters of the Fourth National Bank, the Merchants' Exchange, and the Cotton Exchange, and handed them to him—those two and the one attached to that deposition. "Now," says I, "that is all I have got, and if you can't make the riffle on that just pass out; that is all." So I went on down to my hotel and received a dispatch in about an hour from him that he had sold the bills to Knoblauch & Lichtenstein, and to come up the next morning and get further instructions.

Q. Had you known that firm before?

A. Never had and never saw them, and don't know them now. So I went up the next morning, and Mr. Mackay wrote the dispatch and sent it on to Mr. Camfield from New York how to draw and how to proceed and so on, and that is the last of it.

Q. Then, as I understand it, it was really from McLeod & Reid, yet in a roundabout way, that you got to Mackay, and through Mackay to the firm of Knoblauch & Lichtenstein?

A. Yes; that is just the way it was done.

Q. And the Fourth National Bank had no connection with that?

A. Nothing that I know of.

Q. You state when you arrived in St. Louis one shipment had been made?

A. Yes, sir.

Q. This shipment in controversy was the first one that was made?

A. That is the first one that was made, as well as I remember; yes.

87 Q. That had already been made?

A. Yes, sir.

Q. Then of course you know nothing about the details of that shipment?

A. Nothing whatever.

Q. And when you state that all the cotton notes for that shipment came from the Fourth National Bank that is merely a presumption on your part, is it not?

A. Well, I think they were all there. I don't think we had any notes at that time, anywhere else.

Q. Don't you remember Mr. Norvell, that you also did business, or your firm did business, with the Merchants' National Bank?

A. Yes, sir; but they bought Mr. Camfield's bills to take up those that were shipped while I was in Europe to another concern, as well as I remember.

Q. Well, you have no positive knowledge on that?

A. No; nothing at all, only from the books. I see on the 12th of June——

Q. Well, if you have not the books here I would rather you would not state. After the first shipment was made you and Major Camfield remained in the city doing business as usual?

A. Yes, sir; through August.

Q. When did the first news arrive from Europe that there was something wrong about this cotton?

A. The first or second of September.

Q. Up to that time you continued in business?

A. Oh, yes.

Q. Both remaining in the city and attending to business as usual?

A. Yes, sir; everything pleasant; nothing wrong in any way.

Q. These shipments were not all made at once, nor on ~~consecutive~~ consecutive days, but they run along over a period?

A. Of 30 days.

88 Q. And after they were all made a balance remained in bank for some time, didn't it?

A. After which?

Q. And after the shipment was all made, a balance remained in bank to the credit of the firm for some time, didn't it?

A. Yes, sir; up to about the 6th or 7th of September.

Q. Mr. Norvell, when did you first hear that there was anything wrong about this cotton?

A. The first or second of September.

Q. Before that time you had no knowledge about that?

A. Nothing whatever.

Redirect examination by Mr. JUDSON for plaintiffs:

Q. You have been asked something about letters in your cross-examination; please examine this letter I now show you of the Fourth National Bank of St. Louis, dated St. Louis, April 26th, 1882, addressed to the Deutsche Bank, London agency.

Mr. FINKENLBURG: This letter is a letter addressed to another party in London, and, as far as the evidence shows, never was seen by these plaintiffs, and therefore we object to it.

Mr. JUDSON: To that objection we say this letter was given to this party as a letter of introduction to their foreign correspondent, who, the evidence shows, on that sent a letter which was shown to these very plaintiffs. We shall prove the connection of the plaintiffs with that.

The COURT: Let him show it.

Q. Examine this and state whether this was given to you in connection with other letters of which you have spoken. (Showing said letter to the witness.)

A. It was.

Q. What did you do with that letter?

A. I carried it with me to Europe.

89 Q. To whom did you deliver it, if anybody?

A. I showed it to McLeod & Reid.

Q. No; this one here addressed to the Deutsche Bank of Berlin.

A. I delivered it to the Deutsche Bank when I arrived in London.

Q. Did they give you anything on that then?

A. They gave me letters on that letter; they gave me letters to their correspondents in Germany, at Bremen, Hamburg, and Berlin.

Q. Did they give you any to the National Provincial Bank of Scotland?

A. On my return from Scotland I called to see them again and draw some money; told them I was going to England; they told me they had no branches in Great Britain, but had correspondents at Liverpool and Manchester, but would prepare me letters to their correspondents and send them to me at the hotel, which they did.

Q. Did you show any of those letters to the plaintiffs in this case?

A. I did.

Mr. JUDSON: The letters already referred to in the deposition of Mr. McLeod. We offer the letter dated St. Louis, April 26th, 1882, to the Deutsche Bank of Berlin, London agency, London, as follows:

Fourth National Bank of St. Louis.

[SEAL.] ST. LOUIS, *April* 26, 1882.

To the "Deutsche Bank, Berlin," London agency, London.

GENTLEMEN: Permit me to introduce to you in the bearer of this Mr. L. C. Norvell, of the firm of "Norvell, Camfield & Co," cotton

buyers, of this city. Mr. Norvell visits England with a view of forming business connections, soliciting orders from spin-
90 ners & others for the purchase of cotton, & in pursuit of this object may have occasion to consult and advise with you.

I would bespeak for Mr. N. your kind attention, and any favors shown him will be duly appreciated.

Yours most resp'y,

F. W. BIEBINGER, *Cashier.*

Q. You spoke of your not suspending business until September; what, if any, business did you do in August?

A. We shipped out cottons we had on hand.

Q. Did you do any other business?

A. No, I think not.

Q. You did not buy any further cotton?

A. No; none here to buy; we were trying to close out what we had.

Q. Where was all the cotton you shipped out in August after this transaction?

A. It was all in the Fourth National Bank.

Q. Do you know whether or not your firm bought any cotton during your absence in Europe?

A. Yes, sir; they did sell several lots during my absence.

Q. Do you know how much?

A. They shipped one lot of 300 or 400 bales to Walter & Krone.

Q. You mean bought before you went off; I don't mean what you sold while you were away.

A. No; that was bought after I left and probably some time before I left.

Recross-examination by Mr. FINKELNBURG for defendant:

Q. Where you made shipments of cotton, besides the bills of lading and the insurance certificates and the hypothecation documents, what other documents did you forward to the consignee?

A. The invoice and the weigher's certificate.

Q. What does the invoice show?

91 A. The invoice shows the contract price and the amount of the draft to be drawn against it and the weights.

Q. The weights of the cotton?

A. Yes, sir.

Q. Specifically stated for each bale?

A. Yes, sir.

Q. And the invoice attached to this shipment was signed by whom?

A. That was signed by Norvell, Camfield & Co.—signed by Mr. Camfield.

Q. And you say the weigher's certificate is also attached? You find that there, do you?

A. Yes, sir.

Q. That gives the specific weight of each bale?

A. Yes, sir.

Q. Who is that signed by?
A. That is signed by Mr. Haggerty—C. E. Haggerty.
Q. Who is he?
A. Mr. Haggerty is weighing cotton for us now, and has been a cotton weigher here for a number of years.
Q. A regular cotton weigher?
A. A regular cotton weigher.
Q. Known as such in the commercial community?
A. Yes, sir.
Q. Why is he called a reweigher?
A. Well, when we buy cotton from these factories they have it weighed by a public weigher, and we have a reweigher to go after them and see that it is correctly done.
Q. So the weights which are really given to the transportation company are the weights as furnished by the reweigher?
A. As furnished by the reweigher.

CHARLES A. LAWTON, sworn and examined on behalf of the plaintiffs, testified as follows:

Examined by Mr. JUDSON:

State your name and occupation.
92 A. My name is Charles A. Lawton. I am agent of the fast freight line.
Q. What business were you in in July and August, 1882?
A. I was agent of the commercial express.
Q. State what the commercial express was.
A. It was a fast freight line made up of different railroads making a through line from here to the seaboard—from the west to the seaboard—to New York, Boston, &c.
Q. I show you these bills of lading purporting to be issued by the commercial express—their bills of lading. State whether these were issued by your transfer line.
A. Yes, sir.
Q. At the dates stated?
A. I suppose it must have been; yes, sir.
Q. Can you state what the transportation company received from the shipper when this cotton was shipped—whether cotton notes or what?
A. It did not receive anything from the shipper whatever. What they received was from me.
Q. Well, what did you receive?
A. I received from the firm of Norvell, Camfield & Co. 430 cotton notes and a press receipt for 170 bales.
Q. In what warehouse were those?
A. 430, St. Louis Cotton Compress Co. Those were notes, and I received one receipt from the Factors' & Brokers' covering 170 bales.
Q. Have you any personal recollection who brought the notes and receipts to your office?
A. No, sir, I have not, anything more than one or two persons.

Q. Explain when you receive these cotton notes on shipments what do you do with them?

A. Well, at that time, at the time these notes were received, it was the custom to take them—for instance, the St. Louis Cotton Compress Company's notes—it was the custom at that time to take
93 them to Mr. Simmons, the secretary of the cotton exchange, and from him take one receipt covering the aggregate number of bales or notes, and then we would give an order to the transfer Co. to go to the different compresses and get the cotton. Those notes would be sent down there to the secretary by the party—the persons issuing those receipts—and the compress company would give to the transfer Co. the cotton as directed by myself.

Q. The notes would then be given up for cancellation?

A. Yes, sir; in that case they had been given up.

Cross-examination by Mr. FINKELNBURG for defendant:

Q. Mr. Lawton, this is your bill of lading, is it not?

A. Yes, sir.

Q. Signed by you?

A. Yes, sir; by my clerk.

Q. How did you get the statement of the weight of this cotton?

A. The weights in all cases are furnished by the shipper.

Q. In this case that would be Norvell, Camfield & Co.?

A. Yes, sir; in every case.

Q. Well, how are they furnished by the shipper?

A. They bring them; it is the custom; when parties shipping the cotton have the cotton shipped, they bring us what we term a memorandum—that is, giving us assistance regarding the making of the bill of lading, from whom it is received, to whom consigned, destination, marks, number of bales of each mark, and weights, and the weights given to us; if they are of the ordinary average, we accept them as correct.

Q. And issue your bill of lading accordingly?

A. And issue our bill of lading accordingly.

Q. Don't you call for the weigher's certificate?

A. Never, sir.

Q. You don't do that?

A. Never.

Q. Simply take the memorandum of the shipper?

94 A. Yes, sir; with one or two exceptions, I never asked for a weigher's certificate; in fact, I never asked for a weigher's certificate; in one or two cases I asked parties if mistakes had not been made in the weights, but probably not to exceed three in a great many years.

Mr. JUDSON: That is, when the weights appear to be the average weights you make no further inquiry about it?

A. Yes, sir; we are supposed to know the average weight of bales of cotton.

C. E. HAGGERTY, sworn and examined on behalf of the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. State your name and occupation.
A. My name is Charles Edward Haggerty; I am a cotton weigher.
Q. What was your business in the summer of 1882?
A. The same business—cotton weigher.
Q. State whether or not you gave any certificates while cotton weigher for any particular persons.
A. Yes, sir; for two or three parties here.
Q. Who were they?
A. Haimann, Rower & Co.
Q. Did you do any work for Norvell, Camfield & Co.?
A. No, sir; except in this case.
Q. Well, what, if anything, did you do in the matter of the shipment of some cotton belonging to Norvell in the summer of 1882?
A. Well, Major Camfield asked me to make out some certificates of cotton weights that he was going to ship, and I told him I would, which I did.
Q. Did you ever weigh it?
A. No, sir.
95 Q. What did you do?
A. I just copied the weights.
Q. Who gave you the weights?
A. He gave me a memorandum of the weights and I copied it.
Q. These papers shown in evidence and called certificates of weights and signed Charles E. Haggerty, reweigher, "I certify the above are correct"—that is what you did?
A. I did.
Q. You put down the weights he read off to you?
A. He gave to me, yes; well, he did not read them off to me; he gave me a memorandum of the weights.
Q. Did he have them written down on a piece of paper?
A. Yes, sir.
Q. Did you ever see the cotton?
A. I never did; no, sir.
Q. Did you ever hear of it before?
A. Well, I heard of it, of course, afterwards; I knew something about it, but I never thought of anything of the kind, you know.

Cross-examination by Mr. FINKELNBURG for the defendant:

Q. Mr. Haggerty, your position is that of a reweigher?
A. Yes, sir.
Q. You say you were engaged in reweighing for a number of firms and Norvell, Camfield & Co. was not amongst those—that is, not among those for whom you weighed regularly?
A. At that time, no, sir.
Q. This was done at the special request of Major Camfield?
A. Major Camfield asked me to make out these certificates and I told him I would.

Q. Do you know the Fourth National Bank or its officers?

A. I know Mr. Biebinger; I have seen him up there; I used to go up there for Mr. Haiman when weighing for him.

Q. Did you have any communication with Mr. Biebinger concerning this matter?

A. No, sir; nothing at all.

Q. None, whatever?

A. None, whatever.

96 Q. Or any other employee of the bank or officer of the bank?

A. None whatever, sir.

Q. When was it Major Camfield requested you to certify to these weights?

A. I forget the exact date—I think 1882—about a year and a half ago; I think July or June; June or July, about two years ago—I forget the exact date.

Q. Now, did you think it was your duty to certify to whatever Major Camfield submitted to you?

A. That is it; I supposed everything was all right.

Q. You supposed everything was all right?

A. Certainly.

Q. You supposed everything was all right?

A. Yes.

Q. Why did you suppose so?

A. Well, I generally suppose everything is all right that anybody requests me to do.

Q. Do you make a practice of certifying to weights without weighing?

A. No. I do not.

Q. Well, then, that was exceptional, was it, in this case?

A. Yes, sir; it was.

Q. Then I ask again why did you take Major Camfield's statement as correct? Did you have confidence in him?

A. I did; yes, sir.

Q. How long had you known him?

A. I have known Major Camfield 7 or 8 years—ever since I have been in St. Louis.

Q. Did you know him to be reliable in his statements before that time?

A. Yes, sir; I did.

Q. And that is the reason why you took his statement?

A. Yes, sir; he asked me to do this, and I told him I would.

Q. Did it occur to you at all that you ought to weigh that cotton?

A. Oh, I knew the cotton had been weighed.

Q. But I mean for the purpose of making out your certificate?

A. Well, I knew the party who had weighed it was not

97 here at the time.

Q. Who was that?

A. His name was Johnson. He was absent at the time the original party *who* weighed the cotton, and Major Camfield asked

me to make out a certificate, and I told him certainly I would, thinking, of course, that everything was all right, which I did without hesitation.

Q. Without any hesitation?

A. Yes, sir.

Q. Did you know what these certificates were issued for at that time?

A. I knew of course that they accompanied the drafts and exchange and everything of that kind.

Q. You knew that feature of the transaction in reference to that cotton would probably be based on your certificate?

A. Yes, sir.

A. A. PATON, sworn and examined on behalf of the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. State your name and occupation.

A. My name is A. A. Paton; I am a cotton buyer; St. Louis and Memphis.

Q. How long have you been engaged in the cotton business?

A. 15 years.

Q. Are you acquainted with the cotton business as conducted in St. Louis?

A. Yes, sir.

Q. Were you engageed in St. Louis in business in the year 1882?

A. Yes, sir.

Q. What was the weight, the average weight, of a merchantable bale of cotton in the season of 1881–'2?

A. The average weight of 50,000, which I handled in the season of 1881–'2, was 488 pounds.

98 Q. From your acquaintance with the trade what do you say as to that representing the average of all the cotton handled?

A. That would represent about the average of the cotton of the season of 1881–'2 handled in St. Louis.

Q. Now, when you speak of a merchantable bale of cotton what do you mean by that?

A. As buyers we are obliged to accept all cotton that may weigh over 300 pounds; under that we reject.

Q. And you are entitled to reject it irrespective of quality?

A. Irrespective of quality.

Q. How is it paid for—by the bale or pound?

A. By the pound; all cotton paid for by the pound.

Q. What do you say as to cotton during that cotton year of 400 pounds and under per bale—cotton of 400 pounds and under—whether or not that occurred in the trade to your knowledge?

A. Oh, yes; bales were sold here, but under 400 pounds it was exceptional.

Q. What do you mean by exceptional?

A. In 100 bales there might be one or two that would be under 400 pounds.

Q. Are you acquainted with the course of the market values of cotton in St. Louis, say, from January 1st. 1882, on to the first of August, 1882?

A. Yes, sir.

Q. What was the tenor of prices?

A. During the spring the market value of cotton increased in value slightly, about a quarter to a half a cent; in July it was advancing and until the latter part of August, when it was at its highest value.

Q. From your knowledge of the current market values of cotton, how did cotton, say, the middle of March, the middle or latter part of March, compare with the value two months later, say, the latter part of May, 1882; what was the course of market values during that period?

99 A. If anything there was an advance of about a quarter to $\frac{3}{8}$ of a cent a pound.

Q. Have you a business connection in Liverpool?

A. Yes, sir.

Q. Is your house connected in business with Liverpool?

A. The firm has an office in Liverpool.

Q. Are you acquainted with the course of prices in Liverpool for cotton?

A. Yes, sir.

Q. How is it as between Liverpool and Glasgow; which is the controlling market in prices, if either?

A. Liverpool is the controlling market as to prices; Glasgow is a secondary market, being a very small one; it supplies spinners in the neighborhood of Glasgow.

Q. Then I understand the prices in Glasgow would be substantially what they are in Liverpool?

A. They would be; yes, sir.

Q. What was the course of the market value of cottons in Liverpool, say, during August and September, 1882?

A. In August they advanced until the last week in August, when they were at their highest prices, the quotations being 7 pence $\frac{3}{8}$ during that week for — Orleans cotton and 7 pence $\frac{3}{16}$ for upland; declined a little in September.

Q. When did the decline come in August?

A. It began the last days of August and continued through September.

Q. How did the prices of cotton, say, as they were in Liverpool and Glasgow the first week in September compare with what they were on this side in the latter part of July, say, in St. Louis, in reference to shipments?

A. If you will hand me that Financial Chronicle, I will give the exact figures.

(Book handed to witness.)

Q. What book is that?

A. It is the Financial Chronicle of New York, which has a record of the market values.

Q. Can you, by consulting that, recall the range of values
100 during that time?

A. Yes, sir; these are the actual figures of the market, which can be verified by daily reports either in Liverpool or New York, and there can be no higher authority than the Financial Chronicle.

Q. You were engaged in transactions during this period yourself?

A. Yes, sir.

Q. You can examine it and state how it compares with your personal recollection, if you need it to refresh your memory.

A. The last week in July the prices in New York went from $12\frac{3}{4}$ middling to $13\frac{1}{8}$; the first week in September, September 9 to 15, a decline from $12\frac{7}{8}$ and $13\frac{1}{16}$; the highest to $12\frac{11}{16}$; that is, in New York, and the valuation would vary about the same proportion in St. Louis.

Q. How in Liverpool?

A. In Liverpool the highest, as I stated before; the last week in August it declined a fraction, in the same proportion as the second week in September.

Q. State whether or not, in the month of January, 1883, you made any call on the officers of the defendant, in company with one of the plaintiffs in this case.

A. The first week of January, 1883, I called with Mr. McLeod, of the firm of McLeod & Reid, of Glasgow, who was in St. Louis, on the Fourth National Bank.

Q. On whose behalf did you call?

A. S. & E. Smith, of Liverpool.

Q. Will you state the object of that call?

A. In reference to making a demand on a certain day.

Q. State what you did on that occasion, or what Mr. McLeod did.

A. Mr. McLeod went into this matter with the president and cashier of the Fourth National Bank and told them that he had sustained this loss, and he asked them to make it good.

Q. Did they recognize the obligation or decline?

101 A. They declined; said that they hadn't any obligation to pay.

Cross-examination by Mr. FINKELNBURG, counsel for the defendant:

Q. Are you assistant counsel in this case?

A. No; sir; I was instructed by McLeod & Reid——

Q. I only asked you, because you made a suggestion to Mr. Judson that there was a point left uncovered.

Mr. JUDSON: I don't think that is fair. It was simply an oversight, and I recalled him for that purpose.

Mr. FINKELNBURG: We don't dispute the demand was made.

JACOB B. GOLDMAN, sworn and examined for the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. State your name and occupation.
A. Jacob D. Goldman; cotton factor.
Q. Were you in business in the city of St. Louis in 1882?
A. I have been in business here 10 years continuously.
Q. Were you acquainted with the firm of Norvell, Camfield & Co. in the summer of 1882?
A. Yes, sir.
Q. Are you acquainted with the officers of the defendant bank?
A. Yes, sir.
Q. Mr. Biebinger and Mr. Block?
A. Yes, sir.
Q. When did you first hear, if at all, any rumors of Norvell, Camfield & Co. having short cotton on hand in the warehouse—short-weight cotton?
A. It was in the summer—some time in the early part of the summer of 1882.
Q. Do you know whether it was in May or June?
A. I am inclined to think it was the latter part of May.
Q. Where did you hear of it?
102 A. Well, I heard of it from some of the cotton men. I cannot give the source I got it from; it came to me in a private way at the time that there was something wrong in the cotton, but what he did not tell me.
Q. What cotton for what firm?
A. In the cotton stored for Norvell, Camfield & Co.
Q. Where was it stored?
A. In the presses?
Q. Do you know which press?
A. No, sir; I supposed some of it was stored in the St. Louis Cotton Compress Company, as that compress does the main business here.
Q. Does much the largest portion of the business or did then?
A. Yes, sir.
Q. Were you connected with the compress in any official capacity?
A. I was.
Q. In what way?
A. As director.
Q. Were you doing any business with the Fourth National Bank?
A. Yes, sir; I was doing all my business with the Fourth National Bank.
Q. A customer of the bank?
A. I am.
Q. What is the name of your firm?
A. Adler, Goldman & Co.
Q. When you heard these reports did you say anything about it to Mr. Biebinger?

A. I did, sir.

Q. What did you tell Mr. Biebinger?

A. I went to see Mr. Biebinger and told him I had heard that there had been some cotton picked of Norvell, Camfield & Co., and asked if he held any notes.

Q. What did he say to you?

A. He held some notes—yes; and he asked me to see to it and have some of the cotton weighed, which I did.

Q. Who did the weighing for you?

A. I went down to Mr. Reifsneider, our superintendent,
103 and asked him to have some few bales weighed.

Q. Who is Mr. Reifsnieder?

A. He is superintendent of the St. Louis Cotton Compress Co.

Q. Do you know what Mr. Reifsnieder did?

A. He weighed about 15 or 16 bales and sent me the weights of them, and I reported his weights to Mr. Biebinger, and he told me he only held a few bales of them; that there must be some other bank holds that cotton; the average of that weight was something in the nineties, three hundred and ninety, between three hundred and ninety and four hundred.

Q. Did Mr. Biebinger examine those weights in your presence?

A. Yes, sir.

Q. Did he take down the collateral notes?

A. He took some, yes.

Q. Did he take all of them?

A. That I can't tell, sir.

Q. Did he tell you how many notes he had?

A. No; he told me he only had a few of them.

Q. Did you have any further conversation with Mr. Biebinger about it?

A. No; I don't think I did that day.

Q. I mean before this trouble came out?

A. Never a word in my life about it.

Q. Do you know who the weigher was that did this weighing?

A. I do not, sir; somebody selected by Mr. Reifsneider.

Q. When he asked for the weights?

A. Yes; I don't remember.

Q. When you saw Mr. Biebinger did you tell him the source of your information, or that you had heard reports of trouble?

A. I don't think I did. I think it was a confidential friend came to me and mentioned it to me. I don't remember the source exactly.

Q. What were your relations with Mr. Biebinger, friendly?

A. Certainly, sir.

104 Were then and are now?

A. Were then and are now, and always have been, and for that reason I informed him, because we were friendly, and to protect the cotton interest here as much as was in my power, which all of us factors have endeavored to do since we have been in business.

Q. What was the average weight of a bale of cotton in the year 1881–'2?

A. That I can't tell you. I could tell if I saw the books, but I don't keep it in my head.

Q. Could you give the general weight?

A. The average weight was from 450 to 475 pounds; for the last year it has been a little heavier. The season before this it was generally 450 to 475. In fact the crop of the United States is counted on an average as 450 pounds, I believe.

Cross-examination by Mr. FINKELNBURG, counsel for the defendant:

Q. I understand when you spoke with Mr. Biebinger about there being some short-weight cotton you did not undertake to tell him how much was short weight, or the number of bales?

A. No, sir, I did not know anything about that at all myself; I had no idea how much cotton there was or anything.

Q. Thereupon Mr. Biebinger asked you to have some bales weighed?

A. Yes, sir.

Q. And you did?

A. I requested our superintendent to send me the weight.

Q. Do you remember about how many you had weighed?

A. I think 15 or 16.

Q. You brought in the number of bales and the weights?

A. Yes, sir.

Q. And thereupon he examined his cotton notes?

A. Yes, sir.

Q. And came to the conclusion that he did not hold any on
105 that lot of cotton at all?

A. His answer was, "I only hold a few bales." I am inclined to think he mentioned 5 or 6, or something like that, or four or five, but it didn't amount to nothing, and I supposed he was satisfied.

Q. It didn't seem to make much impression on him?

A. No, sir.

Q. And he put away his notes and that was the end of it?

A. The last I saw of it.

Q. What is a merchantable bale of cotton?

A. 300 pounds and upwards.

Q. Anything above 300 pounds comes within the rules of the cotton trade?

A. Yes, sir; sometimes we put in a bale if it should be a few pounds less, but if we sell less the buyers generally ask an allowance, which is credited to them.

Q. When cotton is disposed of it is generally weighed?

A. Yes, sir.

Q. And the weigher makes a certificate?

A. Yes, sir.

Q. And people rely on that generally?

A. Yes, sir.

Q. It is a good deal of bother to have a big lot of cotton weighed at the compress Co., is it not?

A. At some times; it depends how we are crowded.

Q. If the compress warehouse is crowded, it takes time to assort the cotton that is wanted?

A. Certainly, if the warehouse is crowded, you have to take the cotton out of the bins—different numbers in different bins—and there might be bales at the bottom of the tiers, and it might take us two weeks to get the cotton out on the floors if there was no room, or something of the kind.

Redirect examination by Mr. JUDSON for the plaintiff:

Q. What is the cost of reweighing cotton—the fees in this market—a bale?

106 A. We never have cotton reweighed. We have our own weigher.

Q. Suppose a party interested in cotton wished to have it weighed; what is the cost of weighing—the fees?

A. I suppose buyers pay from 5 to 10 cents. I wouldn't have to pay anything.

Q. I mean those who would have to pay—how much?

A. 5 or 10 cents a bale.

Q. How is the stock of cotton here in the summer, as compared with the balance of the year—June, say, to August?

A. It is light, compared with the winter season.

Q. When are the heaviest stocks here?

A. November, December, January, February, and March, and even April. It depends on the season—the season in the South. Some years we get a crop early; other years, late; this year, very early.

Q. Which is the lightest period of the year?

A. The lightest period of the year is July and August.

CHRISTIAN PEPER, sworn and examined for the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. State your name and residence.

A. Christian Peper; I reside in St. Louis.

Q. State whether or not, in the spring and summer of 1882, you heard anything—or, first, what business are you engaged in?

A. I am in the tobacco business.

Q. Are you acquainted with the defendant in this case, The Fourth National bank?

A. I am; yes, sir.

Q. Have you any official connection with them?

A. I am a director in the board.

107 Q. Were you connected with the board in 1882.

A. I was.

Q. Did you hear at any time in 1882 of there being any short-weight cotton belonging to Norvell, Camfield & Co. stored in any of the St. Louis warehouses?

A. I did.

Q. When did you first hear of it?

A. I think it was pretty well on in the fall.
Q. Did you hear of it before this trouble commenced?
A. No, sir.
Q. You never was informed of anything of the kind?
A. Never was informed of anything of the kind.
Q. Did you ever hear any other people talk about it during the spring or summer of 1882?
A. I heard others talk of it, but not during the spring or summer. It must have been pretty late in the season.
Q. What do you mean by late in the season?
A. The first I heard of it was when they were talking about bringing a suit; that something had been wrong about the cotton.
Mr. JUDSON: If that is all you heard of I have nothing further to ask.

Cross-examination by Mr. FINKELNBURG, counsel for the plaintiffs:

Q. You are a director in the Fourth National Bank?
A. Yes, sir.
Q. I will ask you whether as such you are in the habit of attending there frequently in your capacity as director?

Mr. JUDSON: I don't think that has any relevancy.

A. I am there regularly ever day at certain hours in the board, and when I am not there it is an exception.
Q. As a rule you attend there daily?
A. As a rule I attend there daily.
Q. Did you do that during the year 1882?
A. Yes, sir.
108 Q. Now, I understand you never heard anything said about short-weight cotton?
A. I never did.
Q. Before this suit commenced?
A. No, sir.
Mr. JUDSON: Whether they discussed it in the board of directors is immaterial.
The COURT: He has never heard anything in the board or out.
Q. I will change the question. Did you hear anything about short-weight cotton, either in the board of directors or outside of the board of directors?
A. Not until the beginning of the suit.
Q. Mr. Peper, in regard to weighing cotton at the cotton warehouse. If there is a large lot of cotton——
Mr. JUDSON: He says he is not in the cotton business.
WITNESS: I will correct that. When I say I am not in the cotton business I am interested in a cotton warehouse. In fact, I may state that I started the first cotton warehouse in the city, and am still largely interested in two cotton compresses in this city as a stockholder, but I am not in the business.
Q. Then you are familiar with the cotton business?
A. I am; yes, sir.

Q. And with the methods pursued at cotton warehouses?
A. Yes, sir.
Q. Now, I will ask you is it usual to weigh cotton at cotton warehouses except when it is taken out by the owners?
A. That is the usual and general run; as soon as it is sold it has to be weighed and sampled.
Q. But not during the interval?

Mr. JUDSON: I object.
Mr. FINKELNBURG: It is only preliminary to show what would be necessary to weigh the cotton during the time it remains on
109 storage.

Q. Do you weigh it when it comes to the warehouse?
A. No, sir; not as a rule.

By the COURT:

Q. When do you weigh it?
A. It is weighed when they sell it; they order it out on the floor unless prior to that the factors and brokers will order it weighed, but it is generally weighed when they sell it.

By Mr. FINKELNBURG:

Q. If it should be weighed before it would be necessary to assort it out of the bulk?
A. Yes, sir.
Q. Is that connected with any trouble?
A. Considerable; yes; that depends a great deal on how the warehouses are filled; during the cotton season, when they are pretty full, it is a great deal of trouble to get out a lot of cotton.
Q. Who would do that—the getting out of that cotton for the purpose of having it weighed; would the employees of the Cotton Compress Co. do this?
A. Yes, sir.
Q. They would have to make all the bales and bring them to some central place where the scales are situated?
A. Yes, sir.
Q. And have it weighed and returned again?
A. Yes, sir—how do you mean, returning?
Q. Suppose, as a matter of fact, you desire to have a lot of cotton weighed, it not being the intention at the time to take it out of the warehouse at all, but to leave it there; weigh it while it remains on storage; it would have to be assorted out, carried to the scale, and carried back again, wouldn't it?
A. Yes, sir.
Q. That would require, of course, considerable labor?
A. Yes, sir.
110 Q. The bales would have to be assorted by somebody first; they would have to be hunted out, the identical bales?
A. Yes, sir.
Q. Then they would have to be rolled to the scales or brought in

some way—I don't know how you do it, whether carted or carried, but the bale would have to be transported in some way to the scale?

A. Yes, sir.

Q. And then returned again to its former place?

A. Yes, sir.

By Mr. JUDSON:

Q. Do you know how they handle the scales at cotton compresses?

A. There is different ways—or rather two ways; some have a stationery scale and others have this beam scale; we have used, in fact, three different kinds at times; the beam scale and also the stationary scale.

Q. In the matter of beam scales, all scales are moved around to where the cotton is?

A. Yes, sir.

Q. And they are made for that purpose, to facilitate weighing?

A. Yes, sir.

Q. Now, don't you know that the stocks of cotton were very heavy here in the months of May, June, July, and August, 1882?

A. Well, I stated before I knew that during the summer months generally there was not much here of cotton excepting one season; I don't know whether that was 1882.

Q. Do you know what kind of scales were in use here in the summer of 1882?

A. I can't say that; no, sir.

Q. Do you know whether or not there were any stationary scales in any cotton warehouses, Factors' and Brokers' or St. Louis warehouse.

A. I wouldn't say that.

Q. You don't know anything about it?

A. No, sir.

111 WALTER WALSH, being sworn and examined on the part of the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. State your name and occupation.

A. My name is Walter Walsh; I am city weigher.

Q. What was your business in 1882?

A. Weighing.

Q. Did you have anything to do with weighing cotton?

A. Yes, sir; exclusively.

Q. Were you a licensed city weigher?

A. Yes, sir.

Q. Did you weigh any cotton belonging or purporting to belong to Norvell, Camfield & Co. in the months of May or June, 1882?

A. I did.

Q. How many bales did you weigh?

A. Forty.

Q. Have you a list of those weights?

A. I rendered a certificate and have the book in my possession.
Q. Have you the book with you?
A. Yes, sir.
Q. Can you state from that what they were?
A. I can.
Q. You may produce the book; when were these bales weighed?
A. The 29th of May, 1832; now that is the date in my book here, but they may not have been exactly weighed that day, although I think they were. Sometimes the orders are copied in the book the day before the cotton is weighed, but I think the day this order was copied that the cotton was weighed that day.
Q. At what press did you weigh these bales?
A. The St. Louis Cotton Compress.
Q. Who pointed out the bales to you to be weighed?
A. They were turned out the regular way. I copied the order and then found the bales were turned out regularly, and I weighed them.
Q. Can you give us those weights as you have them?
A. I can.
112 Q. Just give the weights and the numbers of the bales?
A. I call the net weights—

No.	21,636.	Weight,	423
"	27,204.	"	440
"	29,925.	"	429
"	53,728.	"	352
"	84,416.	"	418
"	92,742.	"	426
"	94,291.	"	345
"	126,060.	"	432
"	140,755.	"	343
"	161,241.	"	340
"	38,300.	"	354
"	85,688.	"	536
"	98,510.	"	317
"	114,839.	"	425
"	123,534.	"	408
"	144,439.	"	530
"	148,232.	"	421
"	152,969.	"	335
"	154,052.	"	416
"	186,435.	"	377
"	61,798.	"	337
"	106,705.	"	343
"	109,578.	"	415
"	113,605.	"	387
"	113,755.	"	402
"	114,015.	"	405
"	123,865.	"	420
"	132,818.	"	430
"	138,857.	"	353
"	150,430.	"	415

No.	28,520.	Weight.	339
"	89,932.	"	412
"	92,300.	"	410
"	108,122.	"	387
"	112,664.	"	367
"	135,576.	"	414
"	156,257.	"	387
"	157,221.	"	379
"	67,911.	"	344
"	148,441.	"	315
40 bales			15,728

113 Q. Did you foot up the aggregate of those weights?
A. The footing shows 15,728.
Q. Did you make an average from that?
A. No; I never took the average
Q. That would be that amount divided by forty, the average per bale?
A. Yes, sir.
Q. You mentioned the date, but I have forgotten it.
A. May 29th, 1882.
Q. Who did you give such a figure to?
A. Norvell, Camfield & Co.
Q. Do you know which one of the firm?
A. It was sent up to the office.
Q. Did you ever hear of that certificate afterwards?
A. Never, except that he told me——
Q. Not what anybody told you in this case.
A. No; I never heard a bit.
Q. Did you weigh any cotton under the direction of Mr. Reifsnieder, for Norvell, Camfield & Co. before this?
A. I have no account of it. I often weighed bales of cotton for parties that I never took an account of; for instance, somebody would ask me to weigh a bale, and I would not take the number of that bale; the party I would weigh it for would take it, but if I weighed such cotton as that I have no remembrance of it.
Q. What kind of scales do they use at the St. Louis Cotton Compress Co.?
A. The beam scales all cotton weighers use.
Q. What is a beam scale?
A. It is a long beam with a fulcrum.
Q. How is it moved about; is it stationary?
A. Oh, no, it is not stationary; it is portable; a frame and a beam hung on the frame.
Q. So that you can move it to any part of the warehouse
114 where the cotton happens to be?
A. Yes, sir.
[Q.] So you don't have to haul the cotton around to get where the scales are?

[A.] No; the weighers don't have to do that; the house arranges the cotton out in rows and we move the scales over the floor.

Q. Did you do any weighing of Norvell, Camfield & Co.'s cotton at the Factors' and Brokers' press?

A. I don't know; I don't think I did.

Q. Do you know what kind of a scale they have at the Factors' and Brokers'?

A. A beam; the weighers, as far as I know, have a beam scale there.

Q. The same as that you said they have at the St. Louis press?

A. Yes, sir.

Cross-examination by Mr. FINKELNBURG for the defendant:

Q. When any orders were left for a lot of cotton to be weighed, you did not expect to travel with these beam scales all over the warehouse, but you expected them to assort out the cotton and put it together in a row?

A. That is the custom.

Q. Who ordered you to weigh this forty bales of cotton you have testified to?

A. It was [a] regular order from Norvell, Camfield & Co.; an order sent to the office.

Q. You had no communication with anybody else about it except Norvell, Camfield & Co.?

A. No.

Q. They asked you to weigh forty bales and you did it?

A. Yes, sir.

Q. And you gave them a certificate?

A. Yes, sir.

115 J. T. REIFSNEIDER, sworn and examined for the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. State your name and residence.

A. J. T. Reifsneider; St. Louis; superintendent of the St. Louis Compress Co.

Q. What was your occupation in 1882?

A. The same.

Q. How long have you held that position?

A. Ten years.

Q. Are you acquainted with the firm of Norvell, Camfield & Co.?

A. Yes, sir.

Q. Do you remember how much cotton, approximately, you had in store in the warehouse in the summer months of 1882—in May and June, the spring and early summer?

A. All cottons?

Q. Yes; cotton in your warehouse of all parties, much or little, heavy or light stocks?

A. I have no idea, sir.

Q. How is that time of year compared with the remainder of the year?

A. The stock is generally very much reduced at that time of year.

Q. Do you remember how that time compares with other years in other respects?

A. About the same.

Q. What are the arrangements for weighing cotton in the St. Louis press?

A. All cottons are weighed on orders from the factor.

Q. Have you facilities for weighing without great difficulty and trouble?

A. Yes, sir.

Q. Explain what they are.

A. The cotton is ordered out by the factor, the list of numbers is sent to the warehouse, and on that order we turn out the cotton ready for the weigher. Most factors have their own weighers.

Q. What do you say as to the difficulty and trouble of weighing cotton, when stored in your house, with the facilities you
116 had in the spring and summer of 1882?

A. There was no difficulty.

Q. How about the expense of it to anybody desiring to have it weighed?

A. The warehouse has nothing to do with the expense of weighing, sir.

Q. That is simply a matter of paying the weigher for his services?

A. Yes, sir.

Cross-examination by Mr. FINKELNBURG, counsel for the defendant:

Q. The weighing you have spoken of is the weighing that is done when the owner of the cotton orders it out for shipment?

A. Yes, sir.

Q. Then you undertake to assort out the cotton that belongs to him and turn it over to the weigher?

A. Yes, sir.

Q. And he weighs it?

A. Yes, sir.

Q. Now, supposing I should be the holder of cotton notes in your warehouse, and were not ordering out the cotton for shipment, and I should tell you as a matter of curiosity I wanted to have that cotton weighed and put back again; would you consider it a part of your duty to do that for me?

A. No, sir.

Q. You would expect me to employ somebody to do that, if you permitted it at all?

A. I don't understand.

Q. Would you permit me to have that done unless the bales were ordered out for shipment?

A. Being satisfied you wanted to ship the cotton I would.

Q. You would expect me to get a man to handle the cotton and have everything done at my expense?

A. Not necessarily; if you order the cotton weighed we turn it out for weighing in the regular way?

Q. I am not speaking of the regular way, but the irregular way.

A. Well, as the owner of the cotton, you propose——

117 Q. What I wish to get at is this: You don't consider it a part of your duty to weigh cotton—to turn it out and weigh it—except when it is ordered out for shipment?

A. Yes, sir.

Q. Now, if I should want it done before I am ready to ship, that would be an irregular way, not a usual way?

A. Well, it is sometimes weighed in extraordinary cases.

Q. Well, that would be an extraordinary case?

A. Yes. I mean to say very frequently bales are weighed without an order.

Q. Are you speaking now of large quantities or small?

A. No; small quantities.

Q. I refer to a lot of cotton—say 1,400 bales. Are they ever weighed except when ordered up for shipment?

Mr. JUDSON: I object. I don't think it has any relevancy.

Mr. FINKELNBURG: I wish to show what the difficulties or troubles, if any, there are in ordering a lot of cotton to be weighed before it is regularly weighed for shipment, and what the expense of it is.

Mr. JUDSON: We have no objection to that inquiry.

The COURT: You may answer.

A. Well, never having had such a case, I don't really know what would be done.

Q. What is the expense of weighing?

A. I think it is five or ten cents a bale.

Q. Is that for the weigher?

A. Yes, sir.

Q. It does not include the men who handle the bales?

A. No, sir.

Examined by Mr. JUDSON:

Q. Now, a party holding, say, 1,400 bales of cotton in your warehouse in the summer season, desiring to have that cotton

118 weighed, the party holding the cotton notes, would there be any difficulty in the way of his doing it?

A. No, sir.

Q. He could do it if he saw fit, couldn't he?

A. Yes, sir.

Q. What are your facilities for doing it if a party desired to have that done in the summer season?

A. He could do it very promptly.

Q. What do you mean by promptly?

A. The same day.

Q. All of it?

A. Yes, sir.

Q. What would it cost him?
A. The warehouse charges would be 15 cents a bale.
Q. That would cover the entire expense?
A. For that act.
Q. For having the cotton weighed?
A. Yes; turned out for weighing.

By Mr. FINKELNBURG:

Q. For weighing?
A. Yes.

By Mr. JUDSON:

Q. That would be irrespective of the point whether he wanted to ship the cotton then or not?
A. Yes; if it was only done for that purpose of weighing and being put back again; but if it is being weighed prior to shipment then the expense of weighing could simply come in the regular storage of the cotton.
Q. That is, if I understand correctly, it would come out of the regular storage charge?
A. Yes; included in the regular storage charge.

Examined by Mr. FINKELNBURG:

Q. Then I understand it would cost 15 cents for handling the cotton and the weigher's charges besides?
A. Yes, sir.
Q. And that is ten cents a bale, making a total of 25 cents a bale?
A. Yes, sir.

119 Examined by the COURT:

Q. You are superintendent of the St. Louis Cotton Compress Co.?
A. Yes, sir.
Q. When cotton is received do you pay any attention to the weight at the time it is received?
A. No, sir.
Q. You simply store it?
A. That is all.
Q. And when you deliver it do you weigh it then?
A. Yes, sir.
Q. Do you weigh it yourself?
A. No, sir; it is weighed by the factor when it is sold; he sells by samples; there are four wharehouses, and when he sells it he sends a lists of the numbers which he gives samples from and we turn it out ready for weighing, and his weigher weighs it.
Q. Do you remember of Mr. Goldman sending down a weigher there some time in 1882?
A. I remember of some inquiry made by Mr. Goldman, but not to me individually.
Q. You remember the fact; was there any cotton weighed there?
A. I don't know, indeed, sir.

Examined by Mr. JUDSON:

Q. In that connection I will ask you does the warehouse as a warehouse have anything to do with the weighing for its own purposes?
A. No, sir.
Q. Does your charge for storage in any way depend on the weight of the bale?
A. No, sir.
Q. You charge so much a bale?
A. Yes, sir.
Q. Whatever the weight?
A. Yes, sir.
Q. And the matter of weighing is only a matter for the parties interested in the cotton?
A. Yes, sir.
Q. You don't weigh it when it comes in?
A. No, sir.
Q. Nor when it goes out, as far as you are concerned?
A. No, sir.
Q. You simply issue a cotton note for the bale of cotton?
120 A. Yes, sir.

Examined by Mr. FINKELNBURG:

Q. When you receive cotton in your warehouse you issue cotton notes for it?
A. Yes, sir.
Q. Now, do you let the cotton bales go out of the warehouse without the production of the notes?
A. Sometimes we do, sir.
Q. You say sometimes; under what circumstances do you do that?
A. If the cotton bale is damaged we do it every day, sir; it goes to the pickery to be put in a merchantable condition.
Q. On whose order?
A. On the order of the merchant.
Q. What merchant?
A. The merchant who owns the bale of cotton.
Q. Do you make him show his cotton note?
A. No, sir.
Q. Then how do you know he is in possession of the cotton notes?
A. Our books show ostensibly he is the owner of the cotton.
Q. Then you pay no attention to the holder of the note; you simply take the order of the owner of the cotton as he appears on your books?
A. Those are isolated cases. I mean to say there are comparatively few of these bales that are in that condition, and it has been a custom of course to facilitate the inspection of the cotton to immediately put it in order.
Q. That is supposed to refer to cotton which is not in good condition?
A. Yes, sir.

Q. Which requires some rebaling or some reassorting or grading?
A. Yes, sir.
Q. This you permit to be taken out without the production of the cotton note?
A. Yes, sir; it is only damaged bales.
Q. Do you examine them yourselves to see whether they are in that condition and require such handling, or do you simply take the word of the party who calls on you?
121 A. We take the word of the man who weighs the cotton.
Q. Did you do that in the case of Norvell, Camfield & Co.?
A. No, sir.
Q. You never allowed them to take out the cotton?
A. Yes, sir.
Q. Whose word did you take?
A. We took the order from the merchant who owned the cotton and the notes.
Q. You don't mean to say you saw the notes for the cotton which Norvell, Camfield & Co. withdrew to Mr. Hudson's pickery?
A. Yes, sir; we saw most of them.
Q. The notes were shown to you, were they?
A. They were delivered to us and the cotton delivered on them.
Q. When the cotton was taken from your warehouse?
A. Yes, sir.
Q. To Hudson's pickery?
A. Yes, sir.
Q. When the bales came back what did you do with the notes?
A. The notes were returned to the party.
Q. You have a distinct recollection of that, have you?
A. Yes, sir.
Q. In the year 1882?
A. I don't mean to say all the notes were produced, but a good many of them were delivered on the notes, and the notes returned to the party after the bales were returned to the warehouse.
Q. That is your recollection of the transaction in 1882?
A. Yes, sir.
Q. Can you tell what proportion of the notes Norvell, Camfield & Co. produced?
A. I would suppose half or more.
Q. Do you know how many bales they withdrew from your warehouse?
A. I do not.
Q. Do you know whether one thousand or two thousand?
A. I cannot tell anything about the number.
122 Q. Whether 500 or 200?
A. More than either of the figures.
Q. More than which?
A. More than five hundred.
Q. You think about half the notes were shown to you?
A. Yes, sir.
Q. Now, Mr. Reifsneider, what was the object of their showing

any notes to you at all, if you permitted the bales to be withdrawn without the notes?

A. Well, we delivered the bales on the order of the factors who owned the cotton, who had the notes in their possession, and who sent an order to allow Norvell, Camfield & Co. to take certain portions of this cotton to the pickery to put them in order.

Q. I don't understand you, or else you don't understand me. I understand you to say you were in the habit of allowing the supposed owners of the cotton to withdraw the bales from your warehouse without the production of the cotton note.

A. Yes, when they were in a damaged condition.

Q. Now, Norvell, Camfield & Co. did withdraw bales without producing the notes?

A. Yes, sir.

Q. Now, my next question is: What was the use of their producing any notes at all, if they could get those bales without the production of notes?

A. They could not have got them unless there was a special order from the merchant who owned the cotton.

Q. In that case that merchant was Norvell, Camfield & Co., wasn't it?

A. No, sir; we don't consider anybody owns cotton in the warehouse until they produce the notes. I mean to say a factor in ordering out a lot of cotton to be inspected and sold to the buyer does not change the ownership; that is we don't know it is. We consider it belongs to the merchant until the notes are produced
123 or some evidence to show the transfer was actually made. For instance, a buyer buys a lot of cotton, a certain number of bales, and we turn it out, and he marks the cotton, but we don't know that he owns or possesses the notes for it until he delivers them to the warehouse and takes the cotton up.

Q. Was the cotton of Norvell, Camfield & Co. in that condition during the time when these bales were withdrawn? Who did you understand owned that cotton?

A. We understood the merchants owned that cotton.

Q. What merchants?

A. The merchants who sold those bales to Norvell, Camfield & Co.

Q. Who was that?

A. Quite a number of them.

Q. You understood they owned it?

A. Certainly.

Q. Did you get any orders from them?

A. Yes, sir.

Q. To permit this cotton to be taken out?

A. Yes, sir.

Q. Written orders?

A. Yes, sir.

Q. You can't mention any of the names now, can you?

A. Senter & Co. was one, Gilkeson & Sloss another.

Q. Your understanding is these cotton notes were still in possession of those merchants, Senter & Co. and Sloss & Co., at that time?

A. Yes, sir.

Q. And they gave written orders permitting this cotton to be withdrawn, and thereupon it was delivered to Norvell, Camfield & Co.?

A. It wasn't delivered to Norvell, Camfield & Co.

Q. Well, they were allowed to take it to Hudson's pickery?

A. Yes, sir.

Q. And afterwards the bales came back?

A. Yes, sir.

Q. Now, I understand you correctly, do I?

A. Yes, sir.

Q. Now, as you recollect the matter, Norvell, Camfield &
124 Co. bought from Senter & Co. and Sloss & Co., and from other firms whose names you do not now remember, which was, so far as you know, still the property of those firms, because that cotton might not have been paid for and the cotton notes might still have been in possession of Senter & Co., or Sloss & Co., or any other firm?

A. Yes, sir.

Q. And thereupon orders were presented to you from Senter & Co. and Sloss & Co., and possibly from other firms, authorizing you to permit those bales of cotton to be taken over to Hudson's pickery for the purpose of being repicked and returned; that is correct, is it?

A. Yes, sir.

Q. Of course there was no occasion then, as far as you thought, for producing the notes?

A. They were delivered 20 bales at a time.

Q. And as a matter of fact the notes were not handed to you, but these written orders came?

A. Yes, sir; in some instances probably half the number of bales we had the notes.

Q. You did not understand at that time the Fourth National Bank had anything to do with this cotton?

A. No, sir; I don't suppose they did have. Of course I suppose the notes were in possession of the merchants.

Q. How do you know that?

A. I don't know it; I suppose so.

Examined by the COURT:

Q. This is the form of one of your cotton notes, is it?

A. Yes, sir.

Q. Do you notice what it requires of you as a warehouse man?

A. No, sir.

Q. You ought to read it, then. Suppose Sloss & Co. paid for
125 cotton in that warehouse and you issued a cotton-note like that; would you surrender the cotton without having that note produced? It might go through 20 different hands and it is negotiable on its face.

WITNESS: That is true. I mean to say this cotton was delivered to these parties for the purpose of putting this cotton in condition; delivered 10 to 15 bales at a time, and returned before more was issued.

Q. I understand you to say you delivered it to the merchant who originally purchased it without the production of the warehouse receipt?

A. No, sir; I meant to say if I did not in this instance these bales, being unmarketable, in a measure, were delivered 10 to 15 bales at a time, on the order of the merchant, to the pickery, to be returned to the warehouse before more was issued.

Q. Without the production of the cotton note?

A. Yes, sir.

Q. The whole of this large amount of cotton?

A. Well, only these few bales at a time.

Q. But it appears in evidence a very large number of bales went to this cotton pickery.

A. Yes, sir.

Q. Now, I want to know how it got there—out of your warehouse—unless the cotton notes were produced to you?

A. I say perhaps two-thirds of the quantity we had the notes returned to us for the delivery of the cotton. Only a few instances, such as perhaps Senter & Co. or Gilkerson & Sloss, who sent an order to the warehouse.

Q. What did you do with the bales when they came back?

A. Returned them the notes.

Q. After you had the notes did you make any examina-
126 tion to see whether the same bales came back?

A. Yes; the bales, marks, tags, and numbers were the same.

Q. You went by the tags solely, irrespective of the weights?

A. Yes, sir.

Examined by Mr. FINKELNBURG:

Q. When you got the notes from whom did you get them?

A. They came to us from Norvell, Camfield & Co.; I believe 15 or 20 at a time.

Q. The notes?

A. Yes, sir.

Q. How did they get the notes?

A. They must have got them from the merchants.

Q. That is a matter of supposition on your part?

A. Yes; a mere supposition.

By a JUROR:

Q. I would like to ask if an order, coming from an original merchant to deliver these bales of cotton to anybody's hands, would not have to be accompanied with the original notes that the warehouse gives to the storer of the cotton?

A. If they are to go out of the warehouse permanently they would, of course.

Q. Then your order from the original merchant would have to be accompanied by the notes you gave the original merchant when he stored the cotton; is that it?

A. Not in every instance.

By Mr. FINKELNBURG:

Q. You say when they were ordered out permanently you expected the notes to be returned?

A. Yes, sir.

Q. But when ordered out temporarily then you did not insist on the notes?

A. When they were ordered to the pickery for operation, or to be put in merchantable condition, they would never go but a few bales at a time, and in consequence we simply have a general order
127 from the merchants so as to facilitate the delivery of the cotton, because when we find a damaged bale of cotton it will take considerable time to go to the merchant and get that note, and come down and deliver the note before the bale of cotton could go out. Meantime the bale of cotton is out and back in good order and perfect condition, and goes in the original list it was intended to and is shipped.

By a JUROR:

Q. Suppose you had delivered on the order of the merchant 15 bales of cotton to the pickery and that cotton was lost, and after that the 15 notes originally issued by you were brought to you in the hands of a third party; wouldn't your warehouse be responsible for that cotton?

A. I suppose we would, sir.

The COURT: It was to that point I was directing this inquiry.

WITNESS: This was considered a perfectly legitimate operation, of course, a great many cottons coming in a damaged condition.

By the COURT:

Q. Who has the custody of that cotton until you get that cotton receipt back?

A. The warehouse, sir.

Q. And of course if you let it go to the pickery without having those notes surrendered, don't you consider yourself responsible for its return to you from the pickery?

A. Certainly.

Q. In the same manner substantially as it went out?

A. Yes, sir.

The COURT: There is the difficulty in this case.

By Mr. FINKELNBURG:

Q. As far, then, as it had to go to the pickery is concerned, it is a matter of trust between you and the other parties, the pickery and the merchants?

A. Yes, sir.

By a JUROR:

Q. I would like to know what is the collateral worth when
128 you put up collateral on a bale of cotton supposed to be 520 pounds in weight, and the warehouse let it go out and it comes

back with only 250 pounds; what is the collateral worth; is there so large a margin as 50 to 75 pounds a bale?

A. A bale varies from 350 to 500 pounds.

A. A. PATON, being recalled on behalf of the plaintiffs, testified as follows:

By Mr. JUDSON:

Q. You stated you were acquainted with the market values of cotton in the St. Louis market during the year 1881–'2?

A. During the season of 1881–'2 I was acquainted with the market value.

Q. And you testified as to the values; when you spoke of cotton in your testimony yesterday to what grade of cotton did you refer?

A. The quotations I gave yesterday had reference to merchantable cottons of middling quality.

Q. How does the price of cotton classed as rejected cotton compare in price with what you call middling cotton, which you quoted yesterday?

A. They vary in value from one cent to one-half; a half a cent a pound at least; they did that season vary fully that.

Q. What is meant by rejected cotton in the trade?

A. Rejected cottons are such cottons as we as buyers reject for not being equal to grade throughout the entire bale, or for other causes, such as sand, dust, or other unmerchantable properties in them.

Q. From your knowledge of the market values, what was the range of values of rejected cotton during the months of May and June, 1882?

A. During the months of April and May, when most of it was sold, principally during April, a larger amount of cotton sold
129 that month, the range in value was from 10 to 10½; there might have been a few lots sold a little better if a better grade of cotton.

Q. Now, can you state what was the stock of cotton in the St. Louis market in the months of March, April, and May, 1882?

A. The stock of cotton on the first day of March was 46,501; on the 29th day of April, the last business day of the month, 36,151; May 27th, 15,869; June 30th, 9,477; July 27——

Mr. FINKELNBURG: You are reading?

WITNESS: Yes.

Q. What from?

A. A copy of the books from the Cotton Exchange which are official records of cotton on this market.

Mr. FINKELNBURG: I object to this testimony.

The COURT: I don't see what it has to do with the case.

Mr. JUDSON: I do not wish to insist upon it; it is simply in reference to a point that may arise in connection with other points in the case as to the condition of the cotton market during the several periods.

The COURT: You can reserve that for rebuttal.

Cross-examination by Mr. FINKELNBURG for defendant:

Q. Do you classify all rejected cottons alike in price?

A. No, sir; I gave you a range of prices from 10 to 10½; there might be a few better lots sold at a higher price.

Q. You have given only one figure?

A. No, sir; from 10 to 10½; there might be some better grades; say 11 cents—10¾ or 11.

This was all the testimony offered by the plaintiffs.

At the close of the plaintiffs' testimony the defendant moved the court to direct the jury that under the evidence plaintiffs could not recover; which motion was in language as follows.

130 The plaintiffs having concluded their testimony and rested, the defendant now moves the court to direct the jury that under the evidence the plaintiffs are not entitled to recover.

The court overruled said motion and refused said request.

Testimony for the Defense.

The defendant, to sustain the issues on its part, first called as a witness JOHN NICKERSON, who, being sworn, testified as follows:

By Mr. FINKELNBURG:

Q. State your name and occupation.

A. My name is John Nickerson; I am cashier of the St. Louis National Bank.

Q. Does the St. Louis National Bank loan money on cotton securities?

A. The bank loans money on cotton securities; yes, sir.

Q. Are you familiar with the methods pursued by banks in this city in loaning money on cotton securities?

A. I am familiar with the methods that we follow in loaning money.

Q. When money is loaned on cotton securities, what does the bank receive in its possession?

A. What is called a cotton note.

Q. Does the cotton note indicate the value of the cotton bale which it represents?

A. It does not.

Q. Does it give any information as to the quantity of cotton contained in the bale, its weight or quality?

A. No, sir.

A. What, then, do you rely on in taking cotton notes as security?

A. We rely upon the honesty of the customer with whom we are doing business.

131 Q. When you hold cotton notes as security for a loan and the owner of the cotton desires to ship it, in what way is that done; the methods pursued at your bank, do they differ any from the methods pursued by other banks?

Plaintiffs' counsel objected.

The COURT: What is the general course of discounting cotton notes and what becomes of them after discounting?

A. I can't state anything about the methods in other banks, only what are the methods in our bank. We give up the cotton notes and take our customer's receipt for them, and when he gets the bill of lading he returns the bill of lading to us.

Q. The bill of lading takes the place of the original cotton note, does it?

A. Yes, sir.

Q. During this interval, then, you hold no security at all?

A. None at all.

The COURT: Except the receipt?

The WITNESS: Except the receipt.

Mr. FINKELNBURG: I mean no collateral security?

Mr. JUDSON: That is a question whether that is collateral or not.

Cross-examination by Mr. JUDSON for plaintiffs:

Q. You say your bank were in the habit of loaning money on cotton notes which do not specify on the face the weight of the cotton?

A. Yes, sir.

Q. You do that on the full knowledge of the fact that the note does not specify the weight, don't you?

A. Yes, sir.

Q. Do you know what the average weight of a bale of cotton is in the St. Louis market?

A. I generally figure in my estimate of what they are worth—that they weigh about 450 to 470 lbs.—along there.

132 Q. When you make a loan on cotton notes, in determining the amount you will loan on a given number of notes you take into consideration the current price of cotton on the basis of 450 to 475 pounds a bale?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. I suppose you loan to the factors who receive cotton on consignment, do you not?

A. At present we have no cotton factors as customers. Our loans are made to what are called cotton buyers.

Q. You know there is a distinction between loaning to parties who buy cotton to ship at once or parties who buy to hold for a considerable time, or speculators, do you not, carrying the cotton?

A. In our loans that we make it is on the understanding that it is for cotton that has been purchased for shipment.

Q. You mean to be shipped at once, or in a brief period?

A. That is not always specified.

Q. Now, you spoke of loaning money on cotton notes which do not specify the weight or value or quality of the cotton further than they assume an average weight. Suppose if you had loaned to a customer a large sum of money on cotton notes and you should hear

reports or rumors that that cotton had been manipulated and three bales made out of two, can you state what would be your course of action in such a case?

Mr. FINKELNBURG: I object to the question. I do not think it is proper nor could the answer be binding upon us.

Mr. JUDSON: Was it binding on the plaintiffs in Glasgow, what they would do in the matter of shipping cotton?

The COURT: That is another aspect of the case. I wish to
133 ascertain what occurred here in the ordinary course of the bank. I suppose the question is this: You hold a given number of cotton notes, and you are informed a portion of that cotton has disappeared, either by rebaling or from some other cause, without your consent, what would you do?

A. In our bank such a thing has never occurred, so I can't say what I would do or what the bank would do.

Q. Do you know of any course of business to govern such a case as that?

A. I do not.

Q. Suppose, in such a case, you should be informed by the man who stated that he had himself done the work that a quantity of cotton belonging to a party for whom you were carrying cotton notes had been rebaled by him and three bales made out of two, so that the average weight had been reduced down to 350 lbs. per bale, can you testify as to any course of action or dealing which your bank would follow in such a case?

A. I know of no rule that would govern the bank or an official at such a time.

Q. Now, when you speak of the manner in which cotton is shipped you say you entrust the possession of the cotton notes to the pledgor of the cotton notes?

A. Yes, sir.

Q. That is your custom?

A. Yes, sir.

Q. What does he give you when he takes the cotton notes?

A. A memorandum receipt just simply stating that he has so many cotton notes.

Q. Received for the purpose of exchanging them for a bill of lading?

A. It is not so stated.

Q. That is the understanding between you, is it not?

A. Yes, sir.

Q. You do not propose, in such a transaction, to surrender
134 your control over the cotton notes, do you?

A. In no way.

Q. You still hold the cotton, do you not?

Defendant's counsel objected.

The COURT: That is an inference of law.

Q. Then, what does he bring you back after he takes away the cotton notes?

A. The bill of lading.
Q. That is what you expect to come back, is it not?
A. Yes, sir.
Q. Then you hold the bill of lading, don't you?
A. When the bill of lading is brought back it is generally accompanied by his draft.
Q. And you attach the one to the other, do you not?
A. Yes, sir.
Q. And they are forwarded in that condition?
A. Yes, sir.
Q. And you hold the bill of lading until that draft is paid?
A. Yes, sir.
Q. And it is your cotton until the draft is paid?
A. We so consider it.

By the COURT:

Q. Is the bill of lading attached to the draft?
A. Yes, sir.
Q. Then you hold it in this sense: you hold the bill of lading in the sense that the draft has gone forward; you hold the draft until it is accepted and the bill of lading with it, and forward it?
A. So understood.
Q. And on receipt of——
A. The whole thing is delivered.
Q. (Continuing.) The acceptor, who is the consignee ordinarily, you get your money, and that is all you care for?
A. Yes, sir.
Q. Let me ask one more question: The bill of lading is brought back to you with the draft drawn against the shipper?
A. Yes, sir.
Q. A draft is drawn against the consignee in the bill of
135 lading and who also is the drawee in the bill of exchange?
A. Yes, sir.
Q. That is your property at that time, and you send that forward for acceptance?
A. For payment.
Q. For acceptance, of course; it still remains your property until you get your funds?
A. Yes, sir.

By Mr. JUDSON:

Q. One question more: You spoke of doing this business on trust in giving the cotton notes to the shipper or pledgor to get the bill of lading. Assume a case where you had been informed that the cotton of the shipper had been manipulated so that three bales had been made out of two, and in consequence of such rumors you had called on him and required the putting up of an additional margin to protect your loan, and had been informed of this by the other party, who claimed he had done the work, and you had received a statement of weights showing the average weight of 40 bales weighed in

a quantity, showing an average of about 390 pounds; what would [you] think in such case of the general course of the business of entrusting the possession of the cotton notes to such a party for the bank?

Defendant's counsel objected, as there is no proof of a general custom.

Q. I ask whether there is any general custom or course of business for such a case as that?

A. I know of none.

The COURT: Let me ask one question, to be clearly understood, if I am correct, and, if not, correct me, so that the jury may understand it as well as the court: These proceedings generally commence with your discounting something for your customer and taking cotton notes as collateral?

A. Yes, sir.

136 Q. Those you hold?

A. Yes, sir.

Q. Then, when the cotton is to go forward you take, through the intermediate processes which you have stated, the bill of lading in the place of —?

A. Yes, sir.

Q. That is your property?

A. Yes, sir.

Q. With the draft drawn by your customer?

A. Yes, sir.

Q. Who sends that forward?

A. The bank sends it forward.

R. R. HUTCHINSON, sworn and examined on behalf of the defendant, testified as follows:

By Mr. FINKELNBURG:

Q. State your name and occupation.

A. My name is R. R. Hutchinson; I am cashier of the Mechanic's Bank in this city.

Q. Does your bank loan money on cotton?

A. It does.

Q. In what way, or what is the usual course of business in regard to cotton?

The COURT: Permit me to ask: You heard the testimony of Mr. Nickerson?

A. Yes, sir.

Q. Your course of business is pursued the same as his?

A. Yes, sir; the course is the same.

Mr. JUDSON: I wish to ask one or two questions:

Q. In speaking of the general custom and course of dealing in the market in loaning money on cotton notes you understand perfectly, or it is understood by the banks in loaning money, that the cotton notes do not specify the weights, is it not?

A. Yes, sir.

The COURT: He endorsed what was said by the other witness.

Q. Now, then, in a collateral loan you have a certain basis of value in determining the amount to be loaned on given collateral?

137 A. Yes, sir.

Q. How do you fix that in loaning on cotton? Suppose a customer comes to you and tenders, say, 100 cotton notes; now how do you determine what amount you will advance on that number?

A. In the first place, we rely on the character of the man with whom we are dealing—that he is dealing fair, in the usual course—and it is assumed the cotton he gives is merchantable cotton and the average weight.

Q. What is that?

A. From 450, 470, to 500 pounds; then we know we have fixed a rate which we will advance on cotton of that character; we know what that is.

Q. About what margin do you think is the custom usually to reserve on the current market value of cotton?

A. That varies so much, it is impossible to say.

Q. I am not speaking of value at a given time.

A. I mean even the percentage will vary very much, depending on the ability or solvency of the party.

Q. I understand.

A. Well, from 5 to 10 or 7 to 10; it is not possible to fix it exactly.

Q. What would you call a margin in case of a man where you thought you had to look mainly to the cotton?

A. Well, according to our idea, about $10 a bale.

Q. That would be safe banking?

A. Yes, sir.

Q. Of course, that would be reduced in proportion as you felt the individual responsible?

A. Of course, if we had something else to look to we might make a closer loan.

Q. Now, as a banker, from your knowledge of the course of business, in a case where [a] banker is informed that the cotton which he holds in pledge by the possession of these cotton notes

138 had been manipulated and rebaled, so that three bales have been made out of two bales, the average weight of the new bales being not over 350 pounds, or in that neighborhood, per bale, and that information is brought to the banker by the parties who have done the work of rebaling—the party or parties who have done the work of rebaling—what is the usual course of business, if any, in such a state of facts?

A. I do not know what any usual course of business would be.

Q. Do you know of any course of business to govern such a case?

A. Well, I think——

Mr. FINKELNBURG: Not what you think.

A. I know of no usual course of business; in such a case each man must decide for himself.

By a JUROR:

Q. I would like to ask, if a bale of cotton is considered a merchantable bale at 300 pounds and over, what surety have you for its intrinsic value above the 300 pounds? Have you any surety that it does not weigh more than 300 pounds?

A. None whatever.

Q. Then, is not your margin based on the value of the minimum weight of the bale of cotton?

A. On the value of the average bale; what we consider the average weight of the bale.

Q. We have been told that could be 300 pounds and over, and I wonder where you range your estimate—between 300 and 400 pounds?

A. I stated I considered it from 450 to 500.

The COURT: That is the distinction here. They say, in buying a lot of cotton, if it is made up of weights under 300 pounds to the bale, it is not merchantable in the sense that you are bound to take any of these small bales.

139 By JUROR:

Q. But I wish to know whether he trusted for the difference between the 300 pounds, which is the merchantable bale of cotton, and the 500 pounds, which is the supposable bale of cotton?

WITNESS: Perhaps I used the word merchantable in a sense that was not proper; but I mean by a merchantable bale of cotton what is generally understood as the average weight of a bale of cotton that arrives here, and that is from 450 to 500 pounds.

By Mr. JUDSON:

Q. You have no reference in your statement of a merchantable bale to what parties dealing in cotton are obliged to take on contracts?

A. No.

Q. Or what they are entitled to reject, irrespective of quality?

A. I don't know.

Q. You refer to what is understood among bankers and men dealing in cotton where no weight is specified?

A. Yes, sir.

Q. And you think that is sufficiently understood for you to fix it at from 450 to 475 pounds?

A. Yes; 450 to 500.

By the COURT:

Q. In making your computations, you generally make them on the minimum of the value instead of the maximum?

A. Yes, sir.

By Mr. JUDSON:

Q. What do you call the minimum value?

A. I call it 450 pounds; that would be my minimum.

Q. In your experience as a banker in loaning money on cotton, how frequently have you known bales to run under 400 pounds per bale—that is, taking 100 bales, the average of them?

A. I don't know that I have ever known it to be the case, except where I was notified of the fact, and they were specially pickery cottons.

Q. Are such instances numerous or very rare?

140 A. For certain parties who deal in that class of cotton with them, of course, it is an understood matter.

Q. And they value it as such?

A. As such.

Q. What do you understand is the quality of pickery cotton?

A. Well, I am not sufficiently posted, only about values and weights, that I know of; I don't know anything about the quality of cotton nor the grades.

By Mr. FINKELNBURG:

Q. Do you ever yourself undertake to test the weight of cotton which you hold as security?

A. I never had occasion to do so.

Q. You never ascertained it as a matter of fact?

A. No, sir.

Q. You simply take the statement?

A. Yes, sir.

By Mr. JUDSON:

Q. You speak of taking the statement; did you ever have occasion, where you had loaned money on cotton as full-weight cotton, and information had come to you that that cotton had been manipulated and three bales made out of two?

A. No; never had any such case as that.

By Mr. FINKELNBURG:

Q. One question more; when you receive a bill of lading you rely on the weights stated in the bill of lading, do you not?

A. I do.

NATHAN CORONNA, sworn and examined on the part of the defendant, testified as follows:

By Mr. FINKELNBURG:

Q. State your name and occupation.

A. Nathan Coronna; I am a cotton buyer.

Q. Here in St. Louis?

A. Yes, sir.

Q. How long have you been in the business?

A. Some 20-odd years.

Q. Are you familiar with the prices of cotton in this

141 market in the year 1882?

A. Yes, sir.

Q. Well, what were the prices of cotton, basis middling, in this city in the month of April, 1882; can you tell?

A. Yes, sir; as far as I recollect, sir, the basis of middling in April was about 11⅜ to 11½, sir.

Q. Now, can you tell what it was in May?

A. Well, cotton was advancing, and, as far as I recollect, it went up an ⅛ to ¼ in May.

Q. How was it in June?

A. In June it was 11⅝, sir.

Q. What was it in July?

A. Well, it varied from June until the latter part of August from 11⅞ to 11⅛ and 12¼, basis middling.

Q. How many grades of cotton are there?

A. 8 or 9, sir.

Q. What are they called?

A. Well, generally commencing with low ordinary, ordinary, low middling, middling, good middling, middling fair, and fair.

Cross-examination by Mr. JUDSON for the plaintiffs:

Q. Is there any grade of cotton known as rejected cotton?

A. Yes, sir.

Q. Where does that come in in those grades?

A. We examine every bale, and if we find a bale mixed we reject it, sir.

Q. Then the rejected grade is really cotton, or may be cotton that is not uniform?

A. No, sir; well, we reject the cotton on—if there is two or three different grades in a bale, sir, we reject it, sir, and this is sold afterwards as mixed cotton, sir.

Q. Where does that come in in those grades you have stated?

A. In fact, there is no grade about it; we have to buy it mixed.

142 Q. You have to take each bale—buy it on its own merits?

A. Buy it on its own merits.

Q. Take the bulk of cotton, say a quantity of rejected cotton; how would that compare in value with middling cotton?

A. It is depending how far—how mixed it is, sir. The practice in general is to lay out mixed cotton by itself, sir, and try to get the best prices you can, sir.

Q. Do the best you can with it?

A. Yes, sir.

Q. Do you know how rejected cottons sold here in the spring of 1882?

A. I can't say; but generally, no matter how the prices are, we generally buy it from three-quarters to a cent, sometimes a cent and a half cheaper; we have got to be our own judges how far it is mixed, sir.

Q. So it sells from ¾ of a cent to a cent and a half less than middling cotton.

A. Yes, sir.

Q. How is the stock of cotton here in the spring and summer months compared with the fall and winter months?

A. They are considerably lighter, of course.

Q. Do you remember that cotton year whether there was a light or heavy crop—1881–'2?

A. It was a medium crop, as far as I recollect, sir.

By the COURT:

Q. Do you buy according to grades?

A. Yes, sir.

Q. How do you ascertain the grades?

A. We have to be our own judges.

Q. Is there no regular inspector?

A. Yes, sir; we buy the cottons on the factors' table, sir. They give us orders to the warehouse and we send our inspectors out there to see if the cotton comes up to sample, sir.

Q. Each person inspects for himself?

A. Yes, sir.

143 By Mr. JUDSON:

Q. One question. What was the average weight of cotton bales during that cotton year?

A. As far as I recollect about 480 pounds, sir.

Q. When you speak of a merchantable weight being down to 300 pounds what do you mean by it?

A. Well, we have a right to reject the bale of cotton if it is under 300 pounds, sir; over 300 pounds we have to take, but under 300 we have the right to reject.

Q. So when you say "merchantable" you mean simply cotton that you are entitled and bound to take or entitled to reject under contract?

A. Yes, sir.

Q. Take the average number of bales, say 100 bales, as they come to the market—how frequent are bales, say, under 400 pounds?

A. It is very seldom, sir, a bale is under 300; you may find it in a thousand bales, sir, and weighing over 400 is a very seldom case.

RICHARD COLER, sworn and examined for the defendant, testified as follows:

By Mr. FINKELNBURG:

Q. State your name and occupation.

A. My name is Richard Coler; I am confidential clerk for the house of R. R. Magnus.

Q. What business is that house engaged in?

A. Cotton buying and shipping.

Q. In this city?

A. Yes, sir.

Q. How long have they been in that business?

A. Three years, sir.

Q. Are you familiar with the method of transacting the cotton business?

A. Yes, sir.

Q. Are you familiar with the prices of cotton?

144 A. To some extent, sir.

Q. Do you know what the range of cotton prices was in 1882?

A. Yes, sir.

Q. Did you hear Mr. Coronna's statement in regard to prices?

A. Yes, sir.

Q. How does your recollection agree with his?

A. They are correct.

Q. Can you give us some idea as to the extent of cotton shipping done by your house?

A. Yes, sir.

Q. How much a year?

A. It varies from 20 to 40,000 bales.

Q. Does your house ever borrow money on cotton notes of banks?

A. Yes, sir.

Q. Now, when you ship cotton for which the notes have been pledged to the bank what do you do in order to make a shipment?

Objected to as incompetent and irrelevant. Objection overruled; to which ruling of the court plaintiffs duly excepted at the time.

Q. Are you familiar with the way it is usually done in this city?

A. Yes, sir.

Q. Please state what that is.

A. When we buy a list of cotton the factor sends down an order to turn out this cotton for inspection and shipping. We send our classer down—inspector and weigher—to receive the cotton, and if they come across a rejected bale, which is not merchantable, such as water packed, sand, — dust, they reject it, and the weigher and classer afterwards come to the office and make a return for it; then I send

145 the boy or myself—go to the factor and get the cotton notes from the factor. The cotton notes are assorted out and brought either to the railroad office or to the St. Louis Transfer Co., or to St. Louis Transportation Co., and from each company I get a receipt, and with this receipt I go to the railroad office and they issue me the bills of lading; these bills of lading I take to the bank with my drafts on Liverpool, Havre, or wherever they may be drawn upon, and also a sight draft on New York (if I have sold this foreign exchange in New York), and I hand the whole thing over to the banker or to the cashier of the bank to whom I send this foreign draft, and he buys this amount; he buys the checks which I give for the cotton in payment to the factors.

Q. Suppose the cotton notes are in possession of the bank before the shipment is made, how do you get them?

A. We, as most every cotton buyer in the city of St. Louis, keep our notes in the bank, if we have "overs"—cotton which we cannot ship at the present time we call "overs"—and we keep them in the bank; the bank advances virtually the money to me; in case I ship

out this cotton, for which the notes are in the bank, I go to the cashier and get the notes; he don't take any thing but a receipt from me that I will hand him the bills of lading for shipment, or to make good, you know, this amount.

Q. You say that the draft which is drawn against the shipment to the bank to whom you sell the exchange; now, do you sell your foreign exchange to the same bank with whom you do business here?

Objected to as tending to raise a false issue.

The COURT: If I understand the witness correctly, he takes the bill of lading back to the bank from which he has received the cotton notes, he being a customer of the bank, and draws
146 against the shipment. Now, if the bank discounts your bill, they credit you with the amount of discount here, but if that exchange, as I understand you to say, is on New York, you accompany the original draft and bill of lading with a sight draft for the proceeds?

WITNESS. Yes, sir.

Mr. FINKELNBURG: I wish to know whether that is the ordinary and usual way in which it is done?

Mr. JUDSON: Whether he can testify as to the usage of other parties?

The COURT: Where is the cotton exchange generally sold?

A. Mostly in New York.

Mr. FINKELNBURG: The foreign exchange you say is——

A. Mostly sold in New York by the cotton men to a broker.

Q. Then how do you finish up the transaction with the bank here?

A. I give the bank the bill of lading, the exchange on Liverpool or Havre.

The COURT: Foreign exchange?

A. Foreign exchange—the hypothecation paper, by which I have hypothecated the cotton, to the banker and then the insurance certificate, that the cotton is properly insured, and finally the sight draft on New York on the bank to whom I sell the exchange.

Q. That is the rule that you discount here the sight draft on New York?

A. Yes, sir.

Q. The other documents are collateral to that sight draft?

A. Yes, sir.

Q. Your hypothecation that you speak of is not a letter of hypothecation to the bank here, but is intended for the foreign parties?

Objected — as a legal question.

147 Mr. FINKELNBURG: I want to know from whom it was intended, not the legal effect.

Mr. JUDSON: I do not think the witness can expound those documents.

The COURT: He is only asking what the course of business is.

Q. Now I ask the witness, What do you mean by the letter of hypothecation to the bank here?

A. That secures the holder of that foreign exchange.

Q. Intended for use in Europe, and not here?

A. Whoever holds it.

Q. You don't claim that letter of hypothecation can be used in this country at all, do you?

Objected to.

Q. Then I will ask you, What is the letter of hypothecation that you speak of? What do you mean by the letter of hypothecation—what is the object of it?

The COURT: Show him the one here, and ask him if that is the usual kind and in the usual form.

Mr. JUDSON: All this I object to—asking him to explain it. It accompanies these papers and secures whoever is the holder.

Mr. FINKELNBURG: I wish to know the object it is to subserve, not to expound it.

The COURT: That is a question of law. You always send forward a letter of hypothecation of that kind, made like that. Is that the ordinary way of doing it?

WITNESS: Yes, sir.

By Mr. FINKELNBURG:

Q. That is the usual form?

A. Yes, sir.

Cross-examination by Mr. JUDSON for plaintiffs:

Q. Your firm are customers of the Fourth National Bank?

A. Yes, sir.

148 Q. When you speak of the custom and usage of the business you are, of course, speaking from what you do yourselves and what you know of other people, are you not? That is the way you do business—the way you have described?

A. As I do business in the city of St. Louis; yes, sir.

By Mr. FINKELNBURG:

Q. You have been asked whether you do business at the Fourth National. Do you do business at any other bank?

A. I have not had occasion to. Formerly I did business with another bank, but not for this house.

Q. What bank?

A. The Third National.

Q. Also in the cotton business?

A. Yes, sir.

Q. I will ask, were the methods of doing business the same there?

A. Yes, sir.

Objected to.

The COURT: It is the general custom.

J. C. H. D. BLOCK, sworn and examined on behalf of the defendant, testified as follows:

By Mr. FINKELNBURG:

Q. State your name and occupation.
A. My name is J. C. H. D. Block. I am president of the Fourth National Bank.
Q. How long have you been president?
A. About 18 years.
Q. Did you know the house of Norvell, Camfield & Co.?
A. I did.
Q. How long did you know them?
A. Three or four years—Norvell & Co.—and Norvell, Camfield & Co. about two years.
Q. You say you knew Major Camfield how long?
A. About two years.
Q. And Norvell?
A. Longer.
Q. Did they do business with the Fourth National?
A. They did.
Q. State whether their business was satisfactory.
A. Entirely.
149 Q. Did they meet all their obligations with the bank promptly?
A. Yes, sir.
Q. Did you ever have any difficulty with them before this transaction?
A. Never.
Q. Did you ever hear of this trouble which we are investigating here now during the summer or spring of 1882?
A. No, sir; I did not; never heard anything until suits were brought—until after the suits were brought.
Q. Does your duty as president call you to the bank daily?
A. Yes, sir.
Q. Do you go there every day?
A. Every day.
Q. How long a time do you spend at the bank?
A. From 9 o'clock in the morning to about 6 o'clock in the evening?
Q. Now, was that your habit in the year 1882?
A. Yes, sir; it was.
Q. Were you here during the whole summer of 1882, or were you away at any time?
A. I was here.
Q. The whole time?
A. Yes, sir.
Q. In daily attendance at the bank?
A. Yes, sir.
Q. You never heard of any trouble concerning cotton with Norvell, Camfield & Co. until suits were brought?
A. Never.

Q. Then Mr. Biebinger nor no one else ever spoke to you on the subject at all?
A. No; they did not.

Cross-examination by Mr. JUDSON for the plaintiffs:

Q. Do you know whether or not anybody ever spoke to Mr. Biebinger about it?
A. No, sir; I do not.
Q. Have you no knowledge on that subject?
A. I have not.
Q. All you testify to is what came to you personally?
A. I testify to that what I know, sir.
150 Q. Did you have anything to do personally in conducting the transaction with Norvell, Camfield & Co.?
A. No, sir.
Q. Whose business was that?
A. The business of the cashier.
Q. Do you take part in the daily transactions of the business at the cashier's desk, or do you have a desk apart from him?
A. I have a desk apart from the cashier.
Q. You have another room?
A. Yes, sir; but I know so far when loans are made, which are daily made almost by the cashier, and I know what loans are made and pass on them.
Q. He consults you about passing on loans that are made?
A. Yes, sir.

WARREN JOHNSON, sworn for the defendant, testified as follows:

By Mr. FINKELNBURG:

Q. What is your business?
A. Note and discount clerk at the Merchants' National Bank of this city.
Q. Did you occupy that position during the year 1882?
A. A portion of it—from February 4th on.
Q. Then you occupied that position in July 1882?
A. Yes, sir.
Q. Did you know the firm of Norvell, Camfield & Co.?
A. Yes, sir.
Q. Did they do business at your bank?
A. They negotiated loans.
Q. Do you remember of their making a shipment of cotton on or about July 25, 1882?
A. I cannot say they made a shipment. I know they had cotton notes with us.
Q. Did they withdraw them?
A. Yes, sir.
Q. How many?
A. About 209, I think.
Q. What did the bank get for those 209 cotton notes that were withdrawn?

A. They got a cashier's check for it

151 Q. State what was done with reference to those 209 bales.

A. We held them as collateral on a note, and one of the firm of Norvell, Camfield & Co. came to take up the note and he got the bill of lading; I went with him to the Fourth National Bank and got a cashier's check for the amount that they had paid for the note.

Q. You say he got the bill of lading. Did that bill of lading include those 209 bales?

A. I don't know; I did not read the bill of lading.

Q. Did you give a member of the firm the cotton notes?

A. He came to the office after banking hours and I went with him until he got the bill of lading, then we came back to the Fourth National Bank and got there a cashier's check.

Q. You took the cotton notes from your bank and carried them where?

A. I went with Mr. Norvell to Mr. Camfield.

Q. And you got a check for how much?

A. $9,483.60.

Q. Can you locate about the time when this transaction took place?

A. It took place, I think, on the 25th of July, 1882, after banking hours.

Q. Is it not a fact that you carried the cotton notes from your bank first to the office of Norvell, Camfield & Co.?

A. Yes, sir.

Q. And waited there for Mr. Camfield?

A. I cannot say whether I waited there or went with him.

Q. Well, at any rate, you went to Norvell, Camfield & Co., and went with Mr. Camfield to the Fourth National Bank, and there got a check?

A. Yes, sir.

Q. Was not that a check of Norvell, Camfield & Co. that was cer-
tified by the Fourth National Bank, instead of being a cashier's
152 check?

A. I don't know whether it was or not; I have no recollection about that. Some banks issue a cashier's check and some certify on the face, and I don't recollect whether at that time they gave a certified check or a cashier's check.

Q. That money or check went to your bank?

A. Yes, sir.

Cross-examination by Mr. JUDSON:

Q. Had you had any other note of Norvell, Camfield & Co. at your bank?

A. Yes, sir.

Q. What was that note?

A. It was for $13,185.

Q. When was that note taken up?

A. June 12th.

Q. Do you remember how it was taken up?

A. I do not; I think he took it up.

Q. Do you know what he paid to you?

A. No, sir; I do not handle checks in the payment of notes. He paid it with either a cashier's check or a certified check.

Q. Do you remember why you went with Mr. Norvell to Mr. Camfield's office? Did you have instructions from the officers of your bank?

A. Yes, sir; I went there to get payment of that note.

Q. Did you retain the cotton notes until you did get that or until the bill of lading was issued?

A. I don't know; the cotton notes are turned over, I understand, to the railroad agent.

Redirect examination by Mr. FINKELNBURG:

Q. Did you go to the transportation office?

A. I did in regard to one transaction; whether this is the one or not I cannot say.

Q. But when you went to the office of Norvell, Camfield & Co., and from there to the Fourth National Bank, the bill of lading had been already issued?

A. Yes, sir.

153 Q. Where did you see the bill of lading?

A. He had the bill of lading with his draft deposited in the bank, I suppose, and of course checked on that.

Q. That is, Major Camfield had it when you saw him—when he came down to your bank?

A. He turned over the bill of lading and his draft to the Fourth National Bank, and they issued me that check, or gave the money for it, payment of the note, whatever way you put it.

Q. Were you with Major Camfield during the entire time of this matter?

A. Yes, sir; until I got the money.

Q. Were those your instructions from the bank—to stay with him until you got the money?

A. They told me to go with him, and I went and staid there until I got the money.

By the COURT:

Q. Do you say that the bill of lading was already made out for the 600 bales before you went down with your cotton notes?

A. No, sir; I don't know whether they were or not; I don't presume they were. I don't know only about the 209 cotton notes. I don't know what his draft called for.

Q. You had the cotton notes in your possession?

A. Yes, sir.

Q. You went from your bank where—to Norvell, Camfield & Co.'s office?

A. Yes, sir.

Q. Then what did you do?

A. Got the bill of lading and went to the Fourth National Bank.

Q. What did you do with the cotton notes?

A. He got the bill of lading on them.
Q. Well, what became of the cotton notes?
A. They turn the cotton notes over to the agent of the railroad company; then he issues the bill of lading, and the railroad
154 takes out the cotton.

By Mr. JUDSON:

Q. Had the bill of lading been issued before you went to the railroad office, or at that time?
A. I cannot say that I went there with these cotton notes, because I don't know whether it was that transaction or another one that we had with him. We have so many transactions of that kind with different people that I cannot remember.
Q. You cannot recall the details of this matter?
A. No, sir; being so far back.
Q. Did you have any other transaction of this kind with Camfield?
A. These were the only two notes we had there. The first note he took out.
Q. There was no shipping on that first note?
A. No, sir; not that I know of.
Q. So that this was the only transaction in which there was a shipment, so far as your bank was concerned?
A. I think this was the only one.
Q. Recalling these circumstances, is it not the fact that Major Camfield came to the bank after bank hours, and you were instructed to go with him and take the notes and get the money for those notes, and you went him and staid with him until you got the money?
A. Yes, sir; I got paid for that note.
Q. You staid with him until you got the money?
A. I staid until I got payment of that note.
Q. And did you go with him to the railroad agent's office, or had he already got the bill of lading when he came to the bank?
A. No, sir; he did not have the bill of lading.
155 Q. Did you go with him to the railroad office to get the bill of lading?
A. I don't remember whether I did or not; but I presume he did not have the bill of lading, because he could not get it until he had turned over the cotton notes to the company.

By Mr. FINKELNBURG:

Q. Is it not a fact that the cotton notes were delivered to Major Camfield before you went to get the money; that he got the bill of lading, and then you went with him to the Fourth National Bank to get your money?
A. Well, he got the bill of lading; I did not get it.
Q. He must have had the cotton notes in order to get the bill of lading?
A. Well, I was with him, of course, to get the bill of lading and

turn over the cotton notes. I followed him as close as I could follow anybody.

Q. But you have no recollection of going to the railroad office with him?

A. No, sir.

156 F. W. BIEBINGER, sworn and examined on behalf of the defendant, testified as follows:

By Mr. FINKELNBURG:

Q. State your name and occupation.

A. Frederick W. Biebinger; I am cashier of the Fourth National Bank of St. Louis.

Q. How long have you been cashier of that bank?

A. Ever since its organization.

Q. When was that bank organized?

A. More than 20 years ago.

Q. The Fourth National Bank, of which you are cashier, loans money upon cotton, doesn't it, among other things?

A. Yes, sir.

Q. It loans money on the usual securities offered here in the market?

A. Yes, sir.

Q. Grain and other securities and cotton?

A. Yes, sir.

Q. How long have you known the firm of Norvell, Canfield & Co.?

A. The firm of Norvell, Canfield & Co., as such, opened an account with us in 1881, I think.

Q. You say Norvell, Canfield & Co., as such. Did they have an account before that time in another shape?

A. Norvell, Canfield & Co. and Norvell & Williamson.

Q. They did business with your bank before 1881?

A. Yes, sir; since 1879. In 1879, I think it was, Mr. Norvell opened the account as Norvell & Co., and afterwards he changed it to Norvell & Williamson, and when Mr. Williamson retired he formed a partnership with Mr. Canfield, which was in 1881.

Q. Who was Mr. Canfield, and what business had he been in before cotton—any other business?

A. So I understood; I don't know.

Q. Who was the third partner?

A. John Eimer.

Q. Who was he?

A. Son-in-law of Major Canfield. He hailed from Belleville, Illinois.

157 Q. Do you know his family?

A. Yes, sir; I know his father.

Q. Give us some idea of the extent of business which Norvell, Canfield & Co. did with your bank.

A. Well, they have done business to a pretty large extent; they were pretty large buyers of cotton; several hundred thousand dol-

lars during the season; perhaps about a half a million dollars, more or less.

Q. How large a business did Mr. Norvell do with you before the firm of Norvell, Canfield & Co. was formed?

A. Well, he has done a pretty large business with us; I can't give any estimate.

Q. You can't remember the figures now?

A. No, but it was a pretty large business.

Q. Did you handle their bills of exchange and make loans on cotton notes generally?

A. Yes, sir; that was their business principally.

Q. What was the result of your business transactions with them up to the summer of 1882?

A. They had been entirely satisfactory throughout our connection with the different firms.

Q. Did you have any trouble with them of any kind?

A. No, sir.

Q. They met all their obligations to you?

A. Yes; promptly.

Q. Did you have any trouble about their shipments?

A. Not to my recollection.

Q. There couldn't have been anything of importance; otherwise you would remember it?

A. There couldn't have been; no, sir. There was no trouble that I can remember; all their bills were paid.

Q. Now, was that the situation of things in April, 1882?

A. Yes, sir.

158 Q. Your business transactions with Norvell, Canfield & Co. had been entirely satisfactory?

A. Yes, sir; and were of the most pleasant nature.

Q. Do you remember Mr. Norvell, or some one of the firm of Norvell, Canfield & Co., calling at the Fourth National Bank for the purpose of getting letters of introduction to be used in Europe?

A. Yes, sir; Mr. Norvell called for them.

Q. State what occurred.

A. Mr. Norvell spoke to me a few days previous to his calling for the letters that he thought inasmuch as the dull times were coming on in the cotton season that he would take a trip to Europe and form some connection to inaugurate a foreign business to get orders from the other side for the purchase of cotton here. A few days after that he came and asked me for letters of introduction. This was about the 26th of April. I gave him letters of introduction, and he showed me those letters that he had from the Cotton Exchange and from the Merchants' Exchange.

Q. You say he showed you what?

A. He presented letters of introduction that he had received from the Cotton Exchange and from the Merchants' Exchange, and I gave him my letters of introduction as they have appeared here.

Q. Did Mr. Norvell go to Europe?

A. He left about that time.

Q. Did you ever hear anything of him after that?

A. Not from him direct.

Q. I mean were you in communication with him when he was in Europe?

A. I was not.

Q. You say indirectly?

A. You asked the question whether I heard of him direct.

Q. Well, did you hear indirectly?

A. No, sir.

159 Q. You had no communication with the man at all.

A. I had no communication with the man at all.

Q. You heard Mr. Goldman's testimony here yesterday, did you?

A. Yes, sir.

Q. Mr. Goldman stated he called on you in the latter part of May; I don't know whether he called on you specially, but being at the bank he spoke about some cotton of Norvell, Canfield & Co. having been repicked, or something of the kind. Now, I wish you to state to the jury what Mr. Goldman told you and what you did in consequence of what he told you. Just tell the whole matter to the jury.

A. Well, Mr. Goldman came up and told me that he had heard of a rumor that Norvell, Canfield & Co. were carrying some light-weight cotton; that they had sent some cottons to the pickery to have them overhauled—stained bales that had been stained and damaged cotton—and that in consequence thereof there was some short-weight cotton, and that the rumor had reached him and he thought, as he was a friend of ours, that it was his duty to let us know; he didn't put any great stress on it; it seems he didn't think it amounted to much. Nevertheless, I asked him to have some of these cottons weighed for me, and he went to work and had a lot weighed, I think it was 15 or 16 bales, and he brought be up the memorandum. The average weight of those bales was about in the neighborhood of 400 pounds. He left the memorandum with me and I went to work to trace the bales and compare my numbers that I held—my numbers of bales that I held with those numbers that he had on his memorandum—and I could only find 4 or 5 bales in my possession corresponding with those on his memorandum, so I returned

160 him his memorandum again telling him the result of my examination, and as it was so insignificant I concluded in talking with him over the matter—we came to the conclusion that there was nothing in it to amount to anything. Nevertheless, I came—in thinking over the matter—I came to the conclusion that it was my duty to call for additional margins under the circumstances, and another reason inducing me to do that was this storage on cotton had accrued on some of the cottons for several months—four to five months—and I thought if there was anything in that way it would be best for me to have additional margins; so on the 26th of May, I believe it was, I notified the firm of Norvell, Canfield & Co. to put up an additional margin of $4 to the bale and to pay the accrued interest on the various notes up to that time. The interest then amounted to between $7,000 and $8,000. They very promptly responded to paying the interest, and in a very short time thereafter,

until the margin was made good, the principal amount of the margin called for was made good in the next day or two and the balance in a few days thereafter. Major Canfield, after the margin had been put up, came to me expressing his astonishment why I should call him for margin, inasmuch as cottons had not declined in price. I very candidly told the major what I had heard: I told him, furthermore, that one of the reasons was the accrued storage on the cotton—the accrued interest—and in consequence of this rumor Major Canfield at once pronounced it an infamous lie; that there was nothing in it; that while it was true that among the large number of bales of cotton that they had purchased there were some bales that were called rejected bales, that had to be removed from the
161 cotton warehouse to the pickery, and the stained portions had to be taken out and the grades to be separated, and the cottons were then rebaled and returned again to the warehouse—he assured me upon his word of honor as a gentleman that there was no truth in the rumor of three bales having been made out of two, and that all his cottons, or by far the greater majority of his cottons, were all of better quality, good middling cottons, and with the exception of a very moderate number of bales the bales were all in the original merchantable condition. Having had no doubt or no reason to doubt the Major's sincerity in his statement, never having had any cause to complain about him, I naturally believed the statement of the Major to be correct, and didn't pay any further attention to the matter of margins. We had the cotton margined down to about $40 or $41 a bale, and he stated in reference to that, too, that we had then a margin in the cotton of at least, at the very lowest calculation, taking everything off, *of at least* $13,000; $12,000 to $13,000. About the time that the margin was made good, Mr. John Hudson, the gentleman who was then and is now doing business with us yet, some little, he came up to the bank and he stepped back to my desk and beckoned me to him—and, by the way, I must here say that Major Canfield had informed me that the cotton had been sent to Hudson's pickery. Well, seeing Mr. Hudson there—I was as anxious to see him as he was to see me, perhaps he was more so to see me, as has been developed by the testimony here—well, I asked Mr. Hudson about it, and Mr. Hudson stated to me this: Says he, "Mr. Biebinger, the firm of Norvell, Canfield & Co. have sent some of their rejected and damaged bales over to my pickery for me to overhaul it, to grade it, to assort the different
grades, to take out all the damaged portions of the
162 cotton, and to rebale it again, and at their request I have done so, and the bales have been returned." Mr. Hudson did not state to me that the cotton—he did not state to me the number of bales that he overhauled—he never stated that to me. Mr. Hudson, furthermore, did not state to me that the cotton was sent to him to make three bales out of two. He didn't do anything of the kind at the time, not at any other later period did he state that to me. On the contrary, he left me in perfect ignorance as to the number of bales he had overhauled up to that time. Well, I was perfectly satisfied in my mind that the thing was all right, and that

there was nothing in it, as I would be with any other person in whom I had been in personal business connection—everything satisfactory. I would certainly, to a very great extent, take his statement before anybody's else. The matter thus went on; it never occurred to my mind that anything would be wrong from the assurance that I had received from the Major and the additional margin I had got until the cottons were shipped.

Q. You say nothing occurred until the cottons were shipped?

A. Until finally the cottons were shipped.

Q. Now, what was done when the cottons were shipped, or rather when this shipment was made which is here in controversy?

A. When this shipment was made?

Q. Yes?

A. Major Canfield came up and received from the bank 400 cotton notes, and those 400 with other cotton, 200 bales of cotton, which were somewhere else—with the Merchants' National Bank here—he shipped those 600 bales and brought me the sterling bill for 6,000 pounds on McLeod & Reid, with a New York draft on Knoblauch & Lichtenstein attached for the proceeds of that
163 bill, for which I gave him credit, and paid out of that to the Merchants' National Bank a check of $9,400, this being the amount due them for the 200 bales of cotton that they had carried.

Q. Then, as I understand, with those 200 bales you had no connection whatever?

A. None whatsoever.

Q. You never held the notes representing them?

A. No, sir.

Q. This shipment was made up of 400 cotton notes held by the Fourth National Bank, and 200 which had been held by the Merchants' National Bank?

A. Yes, sir.

Q. At the time when these 400 notes were withdrawn for the purpose of making a shipment, you held in all how many cotton notes?

A. How is that?

Q. At the time when these 400 notes were withdrawn from your bank, how many cotton notes of Norvell, Canfield & Co. in all did you hold?

A. After the 400 had left?

Q. No; including the 400.

A. We had 1,472 notes, representing so many bales of cotton.

Q. Did you select the 400 notes which were used for this shipment, or did Norvell, or Canfield do that, or how was that done?

A. They done that, they always done that; they bring us, for instance, an envelope with 50 notes marked A, B, and C; those are cottons I presume, of one and the same grade or lot; they generally came up with a memorandum asking me then to deliver them the envelope containing so many bales marked so and so and so and so.

Q. Now, he picked 400 out of the 1,472, did he?

A. Yes, sir.

Q. Did you have any knowledge as to what particular 400 bales he selected?

A. No, sir.

Q. Whether they were of superior or inferior quality or
164 high weights or low weights; did you know anything about that?

A. Not the least.

Q. For all you know they may have been 500-pound bales, and of the best quality?

A. Yes, sir. The calculation was not to have any low cottons with us at all except those few that had been, or a portion that was, taken as rejected, and had been rebaled as such.

Q. Then when the bill of lading was brought attached to this bill, which, in truth, was attached to the sight draft on New York, did the bill of lading contain a statement of weights?

A. Yes, sir.

Q. Now, what is the custom in regard to that; when you receive these bills of lading for shipment do you accept the weights as they are stated in the bills of lading as correct?

A. Yes, sir.

Q. Why do you do that?

A. Well, we presume, or we assume, that the transportation company looks out for that; that they get the correct weights they certify, and they say in their bill of lading, and we have no other way of ascertaining it.

Q. You never have the cotton weighed, do you, while you hold the cotton notes?

A. No, sir.

Q. Did you ever have that done—the cotton weighed?

A. No, sir.

Q. Do you know anything about the quality of cotton?

A. Yes, sir.

Q. If you should inspect cotton would you know anything about the quality?

A. I would not.

Q. You yourself know nothing about that?

A. No. Oh, I believe I haven't stated here that I had 40 bales weighed; shall I state that?

Q. You stated about 15 bales, which you requested Mr.
165 Goldman to weigh.

A. Yes. Well, I want to add, in regard to my testimony on that, Major Canfield had 40 bales of cotton weighed; also all these cottons that had been picked out were of less weight than the original bales were, at my suggestion or request. I told him to get me the weights of some of these so-called light-weight bales, and he had 40 of them weighed, and they averaged nearly 400 pounds—394, or, I think, 394 or 5, pounds, or thereabouts. This is the only cotton I caused to be weighed just for my own satisfaction, but I had no other weighed.

Q. Did you have anything to do with the sale of that sterling bill to Knoblauch & Lichtenstein?

A. No, sir; nothing at all. Mr. Norvell sold that in New York.

Q. Before his return to St. Louis?

A. Yes, sir.

Q. Did Mr. Norvell call on you after his return?

A. Yes, sir.

Q. Do you know whether that was before——

A. He brought me the contract—I have got the contract among my papers—that he made with the broker there in regard to the sale of that sterling bill. He showed me with what they purchased it at the time we negotiated the bills on New York.

Q. Did Mr. Norvell return before or after this shipment?

A. Mr. Norvell arrived here in St. Louis on the very day that this shipment was made. He came to my office and said he had just come in on the train this minute, and he came to the office, as he lived up on Washington avenue and was on the way home; said he would just step in a moment and greet me. That *is* on the day the shipment was made. I didn't see him again until—I don't think I saw him again until the next day.

Q. In addition to the bill of lading, which contained the weights of the cotton, and upon which you say you are in the habit
166 of relying as correct, there was also an insurance certificate attached, was there not, in which the cotton was valued?

A. Yes, sir.

Q. Did you have anything to do with the insuring of the cotton?

A. Nothing at all.

Q. Did you have anything to do with the getting up of the bill of lading, the insurance certificate, or the hypothecation certificate or any of the shipping papers?

A. I had nothing to do with getting up any of the documents. Major Canfield he called for the cotton notes and stated that he was ready to ship out that lot of cotton, and this is all I had to do with it. The next thing I saw was the delivery of the documents with the drafts attached.

Q. Of course, you had no knowledge of Haggerty, the reweigher, instead of actually reweighing the cotton, simply certifying to the weights given to him by Canfield?

A. None at all, sir; never.

Q. I wish you to state to the jury what your duties are as the cashier of the Fourth National Bank? How is your time occupied from day to day?

A. Well, it is variously occupied. I generally overlook the mail in the morning; that is about the first thing that I do.

Q. Now, right there, what does your mail amount to?

A. Well, we get on an average of perhaps 250 to 300 letters and postal cards a day at least. Sometimes we have as many as between 400 and 500. Our correspondence is very extensive, and I have always about 200 or 300 letters and postal cards a day. I look over the greater portion of them, and especially the more important ones; they are referred to me, and I give my directions to the assistant cashier or to the book-keepers as to what is to be
167 done in reference to the contents of the respective letters, and then I wait on people—customers who come in to see me; talk with them, receive paper that is offered for discount; on some

of it I pass myself if the parties are in a hurry; others that I don't wish to pass on, or, where parties have time, I refer to the board at their meeting [at] 11 o'clock, and I attend, as a general thing, the board meeting, unless I am prevented by being too busy outside; invariably I attend the discount meetings more or less; I am frequently disturbed and have to leave them; after that the paper that has been passed on by the board of directors, that is referred to me, and I mark it with the rates agreed upon and turn it over to the book-keeper or to the discount clerk, and after that, if I find time, I go on 'change a half hour or attend to such outside business as that I am compelled to attend to myself, and then return to the bank and attend to the usual course of business, correspondence, looking over matters and things in different directions.

Q. Can you give any idea of the volume of business your bank does?

A. The daily volume of business?

Q. Yes, sir.

A. Well, it varies, I think, from a million and a quarter to two millions a day. I think a million and a half to two millions a day is about the average.

Q. Now, is the large proportion of that made of heavy transactions?

A. Yes, sir; it naturally involves heavy transactions to reach that amount.

Q. How many employees have you under you?

A. There are 25 to 26.

Q. Who are under your direction?

A. Yes, sir.

Q. When did you first ascertain that these cottons or these 400 bales which were shipped to McLeod & Reid fell considerably or largely short of the weights as stated in the bill of lading?

168

A. I think that was in the latter part of August or the beginning of September.

Q. And through whom?

A. I think I got a telegram from our London correspondent.

Q. And that is the first you heard of it?

A. That is the first I heard of it. He claimed in that telegram that it was reported that that cotton was short and of inferior quality, but I don't know whether he has reference to this shipment or to the Smith's shipment, but I heard—this was the first information that I had of the condition of the cotton.

Q. Now, between the time of your conversation with Major Canfield, which you have related to the jury, and the time this shipment of 400 bales was made did you do anything in reference to these cotton notes?

A. Nothing at all.

Q. Where ~~are~~ were they?

A. The cotton notes remained in our safe.

Q. Did you pay any attention to them?

A. Not the least.

Q. Did you speak with anybody about them?

A. Not the least.

Q. Now, I wish to know whether you kept on thinking about them or whether you considered the matter disposed of?

Mr. JUDSON: I think there is a limit to these researches of Mr. Biebinger's mind.

Mr. FINKELNBURG: This is a question of good faith.

Mr. JUDSON: That has been fully gone into, I think, the secret operations of his intellect.

Mr. FINKELNBURG: I don't want them to be secret, and I wish Mr. Biebinger to state fully how he felt or thought over the matter, and whether he worried over it.

The COURT: I think the witness answered that he gave no further attention, but left them as they were. Your attention was
169 not called to them in the intermediate time from any circumstance. Was your attention called to the cotton notes until Major Canfield came to get them?

A. Not the least.

Q. It remained in that condition?

A. It remained there; didn't worry my mind about it. I was perfectly satisfied that everything was all right.

Q. Was your attention called to the subject by any one in the intermediate time?

A. No, sir; nothing further was said about it; I heard no other rumors—nothing.

Q. Your attention was not called to it in any manner whatsoever?

A. No, sir!

By Mr. FINKELNBURG:

Q. In all these transactions, from the beginning to the end, did you have any intention of deceiving or defrauding anybody?

A. I had none.

Q. Did you know as a matter of fact that Norvell, Canfield & Co. intended to deceive or defraud anybody?

A. I did not.

Q. Did any other officer of the bank besides yourself have any such knowledge, that you are aware of?

A. Not one of them, that I am aware of. I considered the matter of so little significance after I had my margins and after the conversation with Major Canfield that I did not even consider it worth while to speak to any of our board of directors about it.

Q. You never communicated with any other officer of the bank about it, I believe, except the assistant cashier?

A. Except Mr. Augst; I spoke with him—we had a conversation about matters and things, what was going on in the bank, as he was sitting right alongside of me, and he knows all about it, and we consult about matters and things.

170 Q. He has charge of the collaterals, does he?

A. He has charge of the collaterals.

Q. I used the word officers in asking you whether this matter was

known to any one else in connection with the bank. I don't wish to confine it to officers strictly, so called, of the bank, but did any of the board of directors know anything about this matter?

Objected to.

The COURT: He can answer affirmatively or negatively, as the fact may be.

A. They did not.

By the COURT:

Q. You received the proceeds of the sight draft on this shipment?

A. Yes, sir.

Q. Did you take the portion of it that belonged to the Merchants' Bank to make good to them their part?

A. There was one draft for the whole. I received a draft for the proceeds of the 600-bale shipment, and a young gentleman from the Merchants' National Bank accompanied Major Canfield to our bank, and when he surrendered the drafts with the bill of lading to me the young gentleman from the Merchants' National Bank presented Norvell's check on our bank for the amount due them, which thereupon was certified and turned over to the Merchants' National.

Q. Now, after the proceeds of the sight draft came,—was the amount of those 400 bales—did they make good the amount which you loaned on the cotton notes?

A. Yes, sir.

Q. Was there a surplus?

A. There was a surplus, yes; the statement of their account on file will show that; I don't know exactly what the surplus was.

171 Q. That is, you were made whole by that?

A. Yes, sir.

By Mr. FINKELNBURG:

Q. There is one point my attention has been called to, to which I did not refer to before. I wish to ask you whether there was anything in this transaction—in the shipment of the cotton— which varied or differed from an ordinary shipment, an ordinary transaction of this kind, at your bank?

A. There was not, sir; it was conducted just like any other shipment; like any one else who has loans on cotton with our bank; he would come and we give the notes and take a receipt for them.

Q. How often did that happen at your bank?

A. Frequently.

Q. Can you give some idea how often these transactions take place at your bank of shipping out things where you hold these collaterals?

A. We have several cotton buyers—customers—and it happens two or three times a week sometimes, and other times not as often, but frequently.

Q. As to cotton it happens frequently?

A. Yes, sir.

Q. And similar transactions take place in regard to other collaterals?

A. Yes, sir.

Q. What was the aggregate amount of loans by your bank on collaterals at that time?

Objected to as irrelevant.

The COURT: I don't think you ought to go into the general business of the bank. Of course the question is whether this was an exceptional instance, that is all.

Q. Was there anything exceptional about this transaction at all?

A. No, sir; it was just simply like any other ordinary transaction in the regular course of business.

172 Cross-examination by Mr. JUDSON:

Q. About what time did you first commence to make loans to Norvell, Canfield & Co. upon cotton as a firm?

A. I cannot give the exact date, nor even approximately. I think we had loaned them money on cotton notes before this money was loaned.

Q. Please examine those notes, which I show you, which have been already read in evidence, and see if they are the notes held by your bank (handing notes to witness).

A. Yes, sir; these are the notes. There is one missing; there was another one, of an earlier date, for $8,600 and odd dollars, which is not here.

Q. That would be this note, indicated on this statement a call loan, $8,600, on March 14th. Does that represent the other note (handing paper to witness)?

A. I can tell better from my own memorandum. Yes, the date of the note is March 14th, for $8,600.

Q. What was the collateral for that note?

A. Cotton.

Q. How much?

A. It does not appear from this memorandum.

Q. Have you any recollection on that subject?

A. No, sir.

Q. Then, with the additional of that note, which does not appear here, those notes shown represent the notes with the cotton as collateral?

A. Cotton and other collaterals.

Q. With whom was this business transacted—with Norvell or Canfield—so far as the making of the loans was concerned?

A. Principally with Mr. Canfield; almost altogether so.

Q. In making these several loans did you make any investigation as to the resources of the members of the firm other than the collateral that was given to the bank?

A. I had been, on a previous occasion, informed by both gentlemen, Mr. Norvell as well as Mr. Canfield, that they had about

173 twenty thousand dollars of their own invested in cotton. I was told that each of the partners had paid in five thousand dollars.

Q. That is, you were told by members of the firm?

A. Yes, sir.

Q. Did you make any inquiry as to their resources other than their resources invested in their business?

A. I did not.

Q. To your knowledge, did any of them have resources other than the capital invested in their business?

A. Not to my knowledge.

Q. By reference to these several notes I find that they are dated March 14th, March 20, March 22, March 30, April 18, and down to April 26; then, the next note I find dated May 30, on which there is collateral ten bales of cotton and two membership certificates. Now, that note of May 30th was the note given by Mr. Canfield on the occasion of your call for margins?

A. Yes, sir.

Q. And it was for a margin upon those preceding notes to which your attention has been called—that is, the notes given prior to that time?

A. He borrowed this $950 in order to comply with my request for an additional margin on all previous loans; he had the balance in money and this he had to borrow in addition.

Q. Then, at the time this note of May 30th was given, these several notes that you have looked over, and which are here, and, in addition, the one of March 14, which you have mentioned, for $8,600, were outstanding?

A. Yes, sir.

Q. And for that you held the several cotton notes that are mentioned in these several notes?

A. Yes, sir.

Q. Then, if I understand it correctly, these loans commenced on the 14th of March and terminated on the 26th of April—that is, the date of the last note that you identified?

A. Yes, sir; the last amount borrowed was on the 26th of
174 April, as the note shows, with the exception of this $950.

Q. Have you made any calculation of how much those loans amounted to in the aggregate?

A. Yes, sir; the aggregate is $64,450.

Q. Have you made a calculation of the aggregate number of cotton notes that were held against these several notes?

A. We had 1,462 notes and received in addition 10 notes with the $950 note.

Q. But, leaving that out of consideration for the present, how many had you?

A. We had 1,462 bales.

Q. In making these several loans, commencing with the first one, of which we have no statement of the collateral—that is, the $8,600 note?

A. It was attached to the note.

Q. But the note is mislaid somewhere. At what rate of advance were these several loans made—that is, upon what basis of valuation?

A. The total average was about $44 to the bale.

Q. Some were a little more and some a little less?

A. Yes, sir.

Q. I find in the first note, the one of March 20th of $13,000, that there were 275 bales of cotton, which would make a rate of $47.25 each?

A. They may be; the idea was that we should have about $45 to the bale.

Q. And what overran on one transaction you would try and make up on another?

A. Yes, sir; we were not very particular about giving a dollar or two more, because he represented it to be good cotton.

Q. Nothing was said to you at the time of making these loans about this being pickery cotton?

A. No, sir.

Q. Had you ever heard of pickery cotton before?

A. No, sir.

Q. Had you ever heard of rejected cotton?

A. Yes, sir; I had heard of rejected cotton.

175 Q. In these several loans how did you estimate the amount to be loaned upon a bale of cotton; did any of these cotton notes that you received specify the weight of the cotton?

A. They never do.

Q. Then how did you determine what rate to loan upon these cotton notes as collateral when you had these transactions with Major Canfield; he would bring you in a batch of cotton notes and ask for a loan on a basis of $45—now, what were the elements that made you fix $45 rather than any other sum?

A. He would come in and state to us that he had so many cotton notes on which he would like to get a loan, that the cotton was of such and such a quality, and that that was the market value of the cotton, which we found corroborated by the daily papers, and we would make him the loan.

Q. That is—corroborated, you mean, by the market quotation?

A. Yes, sir.

Q. But as the cotton notes specified no weight, what did you have in mind—what aid would you get from the price of the cotton without something to gauge by as to weight?

A. We assumed that the cotton weighed about 450 pounds to the bale.

Q. Why did you assume that?

A. That is what we generally presume cotton to weigh, that is what we hear from the factors and parties engaged in the cotton business—that a bale ought to weigh at least 450 pounds.

Q. And you assumed that in making these loans?

A. Yes, sir.

Q. And in making, I suppose, all loans upon cotton notes, unless other circumstances are brought to your attention.

176 A. We are entirely ignorant as to the actual weight, and have to take some basis.

Q. And that is your basis?

A. Yes, sir.

Q. And that was your basis in this case?

A. Yes, sir, as it is in all cases where we have confidence in the borrower.

Q. I understand taking an average weight of 450 pounds, which you say was your basis in these matters, and loaning $45 per bale, that would be a full loan at the rate of ten cents a pound?

A. Yes, sir; those figures would agree.

Q. Do you know what the current market value of cotton was about that time?

A. Such cotton as he represented he pledged with us was worth, I think, about twelve cents.

Q. Then at the rate of twelve cents that would make the full value—at the rate of 450 pounds to the bale—over $50 a bale?

A. Yes, sir.

Q. And in loaning $45 you took the difference as your margin to protect you from contingencies or depreciation?

A. Yes, sir; that is what we take the margins for.

Q. When these several loans were made and made on this basis of calculation by you was anything said as to any of this cotton having been to the pickery?

A. No, sir.

Q. Was anything said as to any of it having been overhauled in a pickery before that time?

A. No, sir.

Q. Was anything said as to any of it having been rejected cotton—that is, cotton known as rejected in the market?

A. Not at that time.

Q. I am referring to the time that you made the loans?

A. Not to my recollection.

177 Q. I understood you to say on your examination-in-chief that on the 26th of April Mr. Norvell went to Europe; that was the date of your letter to him, and he left on that day or about that time?

A. He called on that day on me for the letter.

Q. You do not know when he left, except from that circumstance?

A. No, sir; I cannot tell the exact day, but he left about that time, the last days of April.

Q. And after that time you made no fresh loans, after the 26th of April?

A. Not on cotton, with the exception of this $950 note.

Q. Examine this note dated St. Louis, April 1st, 1882, and signed L. C. Norvell. (Handing paper to the witness.)

A. That was an individual matter of his.

Q. What was the collateral there?

A. As is stated, one certificate of membership, No. 209, of the St. Louis Cotton Exchange, and one certificate of membership, No.

2040, of the Merchants' Exchange of St. Louis, with power of transfer attached, properly signed.

Q. This was a private loan to Mr. Norvell?

A. Yes, sir.

Q. Do you know whether or not this was issued about the time of his going to Europe?

A. It was issued on its date, on the first of April, about four weeks before he called on me for his letter to go to Europe.

Q. When he made this loan of you did you ask any other or different collateral from him than what he gave you?

A. I don't think I did; I think he offered the loan in this shape, and it was accepted.

Q. Are you in the habit of loaning money to merchants in good standing upon their memberships in the merchants' and cotton exchanges?

A. Yes; we do it sometimes for poor fellows who haven't got anything else for the moment to offer.

178 Q. So that in this case you did not depart from your custom of loaning to a poor fellow that did not have anything else to offer?

A. We do that sometimes.

Q. And in this case you were willing and did loan to Mr. Norvell upon that security?

A. Yes, sir.

Q. After this time when did rumors first come to your ears about this cotton or any cotton of Norvell, Canfield & Co.?

A. It was in the latter part of May, 1882.

Q. What was the source of that first rumor or information that came to you?

A. I heard it from Mr. Goldman, of Adler, Goldman & Co.

Q. The gentleman who testified here yesterday?

A. Yes, sir.

Q. What were your relations to Mr. Goldman?

A. He was a customer of ours.

Q. What were his personal relations with you—friendly or otherwise?

A. I generally try to be on friendly terms with our customers.

Q. Well, did he come to you in a friendly spirit or otherwise?

A. In a friendly spirit.

Q. Did he say why he came to you?

A. He came to see me, and we were talking of some other business at first, and finally he told me about it.

Q. What did he say about this?

A. He said he had heard of a rumor that there were some lightweight bales of cotton among those of Norvell, Canfield & Co.

Q. Did he say why he mentioned it to you?

A. I don't know that he did; he might have done so.

Q. Did he say he understood you were carrying some of their cotton?

A. I think he knew that.

179 Q. Had you told him of it?

A. I told him then.
Q. Had you told him before?
A. I might have told him before.
Q. But you certainly did tell him at that time?
A. I think he knew we were carrying cotton for them.
Q. Did he say from whom he had got those rumors?
A. No, sir.
Q. Did he say where the cotton had been taken—to whose pickery?
A. I don't know whether he did or not; he simply mentioned to me that that was the rumor; I don't remember anything further of the particulars—whether he told me that the cotton had been taken to Hudson's or any other pickery.
Q. Did he tell you the rumor was that cotton of theirs had been taken from the St. Louis cotton press to Hudson's, or some other place, and rebaled, and the old bales sent back reduced in size to the St. Louis press, and the new bales made out of it, sent to the Factors' and Brokers', or the Peper press?
A. Mr. Goldman did not tell me that; he did not tell me anything of the kind, to my recollection.
Q. Did he not tell you that the cotton had been taken to John Hudson's?
A. I don't recollect that; I don't think he did.
Q. Did you ask Mr. Goldman to make any inquiries for you about it?
A. Yes, sir; in talking the matter over I asked him whether it would not be perhaps well for him to have some of Norvell's cotton weighed down at the warehouse.
Q. What did he say to that?
A. He thought it was a good idea, and he went to work and I believe had fifteen or sixteen bales weighed.
Q. When did you next see Mr. Goldman about this matter?
A. I don't know; shortly thereafter; perhaps a day or two thereafter he came up with the statement, or sent it up to me; I
180 don't remember which of fifteen or sixteen bales, and I compared that memorandum with my list of cotton notes that we held, and I think there were only four or five bales that we could say were ours.
Q. Did you have a list of the numbers of your cotton notes written out on a separate piece of paper?
A. Sometimes we have a list and sometimes we have not.
Q. How was it in this case?
A. I am not quite positive; I think we had a list, but I am not positive about it; the handling of the collateral is mostly done by another gentleman.
Q. When these loans were made upon these demand notes, would Mr. Canfield bring up along with the batch of cotton notes a paper showing what the separate numbers of the notes were?
A. Not always; it is not done as a general thing; sometimes we make a list ourselves just of the numbers.
Q. But is that universally done?

A. No, sir; it is not universally done; they simply bring up the cotton notes; that is the usual way of doing.

Q. Then you put them away in an envelope?

A. Yes, sir; and write on what it is.

Q. And indicate on the back of the envelope what notes it secures?

A. Yes, sir.

Q. Then in these matters when Mr. Goldman sent you up those weights, if you did not have the list of all the cotton notes, how did you compare it with the cotton notes that you had; did you get out the bundles?

A. Yes, sir; I got out the bundles.

Q. You held some 1,400 and odd cotton notes at that time?

A. Yes, sir.

181 Q. Did you go over all of those?

A. I certainly must have gone over them all.

Q. Are you sure of that, that you went over the whole 1,400?

A. Yes, sir; I am quite sure that I did go over all of them.

Q. How long did it take you?

A. It might have taken me and one of our young men as much as two hours or an hour and a half.

Q. Who was the young man that went over them with you?

A. I don't remember now.

Q. About what date was it that you saw this list of weights sent up by Mr. Goldman?

A. I don't know whether he sent it up or brought it himself; nor can I remember the time.

Q. How did those weights average?

A. The 16 bales averaged, I think, in the neighborhood of 400 pounds; I think a little over 400 pounds; but whether a little more or a little less I cannot remember; I did not pay very much attention to it then.

Q. Did you preserve the paper showing those weights?

A. I did not.

Q. What did you do with it?

A. I returned it to Mr. Goldman with the remark that there were only five or six bales that we could trace as our cotton.

Q. Did you return it that same day?

A. I don't think so; I think it was next day.

Q. What did you do next about this matter?

A. I called on Norvell, Canfield & Co. for additional margin.

Q. For how much additional margin?

A. $4 a bale.

Q. Did Mr. Goldman tell you in this conversation, when he told you about these rumors of the cotton or of some of the cotton being short, that there were reports that some of Norvell,

182 Canfield & Co.'s cotton was rejected, stained, and damaged cotton?

A. He might have said something about that; I don't remember.

Q. You cannot say that he did not say it?

A. I am not prepared to say that he did say so, nor can I say that he did not say so; I don't remember.

Q. When you called for a margin from Canfield, upon what was that call based of $4 per bale?

A. I don't know how I came to name exactly $4; it was a pretty good margin to make good; I called also for the accrued interest—some $700 or $800—and I thought the balance would be amply sufficient to secure storage, and in case there should have been any short bales caused by the rebaling or anything of that sort.

Q. You thought it was better to be on the safe side?

A. Yes, sir.

Q. Do you remember the day on which you made this call for margins?

A. I believe it was on the 26th or 27th of May, 1882, if I am not mistaken.

Q. Have you that letter now?

A. Here is a copy of the letter of the 26th of May, 1882 (producing a letter).

Q. Please read that letter.

A. (Reading.) "St. Louis, Mo., May 26, 1882. Messrs. Norvell, Canfield & Co., city. Dear Sirs: I beg to hand you herewith statement to date of interest accrued on your various call loans, amounting to $733.53, which please pay, and credit will be given therefor on the respective notes. I also request that you give additional security to the extent of $4 per bale on the cotton notes as due on the various loans that you have from this bank, or else reduce such loans by paying in cash at the rate of $4 per bale. This de-
183 mand is made in pursuance of and in accordance with provisions contained in notes signed by you for the various sums advanced. A prompt compliance is expected. Yours respectfully, F. W. Biebinger, cashier." On the margin it states that notice was sent to Mr. Canfield on May 26th, 1882, at 4 o'clock p. m.

Q. How long was this after you got this statement of the weights from or through Mr. Goldman?

A. I don't know that I had the statement of weights already on that; I may have had it or I may have received it later.

Q. I mean Mr. Goldman's statement of weights?

A. That is what I mean.

Q. Then you cannot recollect whether you sent this request for margins before or after you got the statement of weights from Mr. Goldman?

A. No, sir; I cannot exactly recollect the date.

Q. What is your best recollection?

A. It was all done about at the same time.

Q. After you served this notice on Mr. Canfield, on the 26th of May, did he come up to see you?

A. Yes, sir.

Q. When did he come up?

A. He came up the next day and began covering his margin that I called for.

Q. Did he come up to make any objection to your call for margins?

A. No, sir.

Q. Did he come up to ask you why you made a call for margins?

A. No, sir; not then.

Q. He did not say anything at that time about it?

A. No, sir.

Q. He just came right up?

A. Yes, sir, and paid over his margin; he did not do it all next day; he paid some two or three days subsequently, but the principal part he paid that day, the 26th.

Q. I find on these notes sundry endorsements. Those
184 credits that you see written in ink on the back of the notes represent this payment of margin?

A. Yes, sir.

Q. I see one interest is calculated to May 26th, inclusive?

A. Yes, sir.

Q. I find that the interest on those notes foots up $597.14, but that does not include the other note which I have not here.

A. The total of the interest is stated in my letter; it is $738.56.

Q. And what was the total amount of the call for margin at $4 a bale?

A. It must have been in the neighborhood of $6,000, for we had 1,462 bales.

Q. That would be, then, $6,500 or $6,600 of principal besides $738 of interest?

A. Yes, sir.

Q. Was that all paid by Mr. Canfield?

A. Yes, sir.

Q. You have spoken here of this note of May 30, 1882, for $950, secured by ten bales of cotton and one membership certificate of the Merchants' Exchange and one membership certificate of the Cotton Exchange; I understood you to say that this note was given by him in raising funds to pay that margin with; is that correct?

A. Yes, sir; he had all the balance in cash and he was lacking that to pay the interest and the margin.

Q. Did you make any objection to making him this further loan?

A. No, sir.

Q. Did you make any inquiry at that time into the financial responsibility of Mr. Norvell, Mr. Canfield, or his partners?

A. No, sir; I made no inquiries.

Q. Did you make any inquiry of Mr. Canfield as to his financial ability?

I did not; I had previously been told that they had about $15,000 or $20,000 in cotton.

185 Q. You had been so told by themselves, I understand?

A. Yes, sir.

Q. Had you been told that by anybody else?

A. No, sir.

Q. Did you make any inquiry of Mr. Canfield why he found it

necessary to subject his membership in the Merchants' Exchange and the Cotton Exchange to pay this margin that you called for?

A. I did not.

Q. How much did you allow him on the Merchants' Exchange and Cotton Exchange certificates?

A. I allowed him $950 on all the securities there.

Q. Well, there are ten bales of cotton; how much did you allow the cotton per bale?

A. I cannot tell you to-day how I ciphered that out at the time; I concluded that the collaterals together were sufficient to cover that note.

Q. I see by the endorsements on the back of these notes that these payments of margins are continued down to the first and second day of June; have you a memorandum when the different payments were made?

A. Yes, sir.

Q. Please read it.

A. On the note of $8,600 there was paid $1,000 on the 30th of May; on the $13,000 note $900 was paid on June 21st; on the note of $3,285 there was $1,000 paid on May 27th; on the note of $9,000 there was paid $1,000 on May 27th; on the note af $14,600 there was paid, on June 2nd, $1,500; on the note of $12,500 there was paid, on May 30th, $700; on the note of $3,465 there was paid, on May 27th, $700; so that the principal amounts were paid in May.

Q. Did Major Canfield come up to talk with you about this margin before or after the payment?

A. After the payment; he came to me and wished to know why I called upon him for a margin, he saying that there was no occasion for it.

186 Q. Was that before or after John Hudson came up to the bank?

A. It was before John Hudson came to the bank.

Q. Are you perfectly sure about that?

A. I think it was.

Q. Did not John Hudson tell you when he came up there that Mr. Canfield had asked him to come up and see him about that margin?

A. John Hudson came after Mr. Canfield.

Q. Then we will take Mr. Canfield. What did you tell Mr. Canfield when he asked you why you called for the margin?

A. I simply told him in the first place that I called upon him for additional margin for the reason that some of the cotton had been stored for a number of months, and storage had accrued which reduced its value; then I told him secondly, "I have understood that you had some light-weight cotton among the cotton that you carried."

Q. Did you tell him you had heard that he had three bales made out of two?

A. No, sir; I did not state that.

Q. Had you not heard rumors of that?

A. I had heard that they had some light-weight cotton.

Q. Had you not heard rumors that they had made three bales out of two?

A. Not at that time; I heard it later.

Q. Not before that?

A. No, sir; not to my present recollection.

Q. Have you not so stated in depositions given by you in this case?

A. I don't think I did; if I did I can only speak from my present recollection now.

Q. Did you tell him how much storage had accrued?

A. I don't think I went into details.

Q. Would you ever have thought of calling for more margin if you had not heard that report that came to you from Mr. Goldman?

187 A. I admit, and told you so, that I called for additional margin because Mr. Goldman had informed me that the rumor was that there was some short or light weight cotton. The storage had really nothing to do with it; it entered into the calculation as a matter of course.

Q. You mentioned that to Mr. Canfield, too, that that was not the occasion of your calling for a margin?

A. I am in the habit in whatever I mention of meaning it; that is my usual style of doing business with him or anybody else.

Q. Did you not tell him further in this conversation that you had not only heard he had some light-weight cotton, but that he had rejected and stained cotton taken to the pickery?

A. I think he stated to me—in fact, I am positive he did state to me—that he branded the rumor, as I have already said, as an infamous lie, and that it was set in circulation by parties inimical to them, and perhaps more especially to Mr. Norvell, but that there was no truth in it. He then went on to say that among the various lots of cotton that they bought there were bales among them of rejected cotton, bales that had been damaged—"cow eaten," as he termed it—and he had sent them over to the pickery, and had the stained and damaged portions removed from the bales in order to have the grade of the cotton remain in good shape, and such as it was, to have the bales sent again to the warehouse, but that this was a very limited number, and that by far the greater portion of this cotton was of a very fine quality—good middling cotton, and that they were all in their original shape and form; had not been handled or overhauled. I had no reason to doubt the gentleman's statement, because our relations before that time had always been such as to show him to be a man of truth and veracity.

188 Q. Did he bring you up a statement of the weights of forty bales on that occasion or afterwards?

A. He then volunteered at the same time to have some of the cotton weighed, and afterwards brought me up a statement of the weight of forty bales that he had weighed by Walsh, a statement of which must be here.

Q. We will come to that in a moment. Did you in this conversation with Mr. Canfield ask him whether he had this stained and

damaged cotton taken to the pickery before or after the cotton notes were pledged to you? Did you have any conversation with him on that subject?

A. Yes, sir.

Q. Did you make any inquiry of him on that subject?

A. No, sir; it did not enter my mind at all to inquire into that as to when it was done.

Q. Did you ask him how many bales were this pickery cotton?

A. There was no number of bales specified.

Q. Did you ask him?

A. No, sir; I did not ask him.

Q. Did you ask him at what pickery it was done?

A. I don't think I asked him at what pickery it was done.

Q. Did he state to you at what pickery it had been done?

A. He might have done so. I think he named John Hudson, but I won't be sure.

Q. You knew John Hudson then?

A. Yes, sir.

Q. He had done business at your bank for some time?

A. Yes, sir; he had been doing business with us for some time.

Q. How soon after this did Hudson come to see you?

A. I think he came soon thereafter.

Q. Soon after Mr. Canfield was there?

A. Yes, sir.

Q. Did he come before or after Mr. Canfield had this cotton weighed?

A. That I don't remember now.

189 Q. State what transpired when Mr. Hudson came there.

A. I think he came after that cotton had been weighed. If I have that certificate of weights here I can tell (examining paper). He came after I had these weights from Mr. Canfield.

Q. What did John Hudson say when he came up to the bank?

A. He came up there and explained to me in regard to that Norvell, Canfield & Co.'s cotton that they had sent some of their rejected bales over to his pickery, which he had overhauled, separated the stained and damaged portions from the bales, put the bales in shape again, and sent them back to the warehouse.

Q. Did he say how the bales when they were returned compared in weight with what they were when they went to his pickery?

A. He told me, of course, the amount of damaged cotton that he had taken out of the bales, that the original bale was so much, and that it was so much less afterwards as he took out any stained or damaged cotton.

Q. Did he say that he took out from 100 to 120 pounds from a bale?

A. Not that I recollect.

Q. Did he not say that the proportion ran about so as to make three bales out of two?

A. He did not; he did not say anything of the kind.

Q. What did you say to him?

A. I told you what I said to him.

Q. Did you ask him any further question?

A. He was standing talking to me and not I to him.

Q. What did you say to him after he told you this?

A. I don't know that I said anything to him. I presume I listened to what he had to say. I did not send for him.

Q. You did not feel any interest in seeing him at all?

A. Not particularly. I did not feel any alarm in the matter at all.

190 Q. Did you not say this morning in your direct examination that he had said he was anxious to see you, and when you saw him in the bank one morning you were anxious to see him?

A. That was when he was there.

Q. As long as he came you were willing to see him?

A. As long as he was there I was willing to talk to him on the subject.

Q. Before anything was said that day you knew he had had this cotton at his pickery, or some of the cotton—in other words, you knew that this was the place the cotton had gone to?

A. I believe I knew at that time that the cotton had been picked at this place.

Q. Did you ask him any question at all about it after he made this statement to you?

A. I think Mr. Hudson did pretty much all the talking.

Q. The question is, Did you ask him anything?

A. I may have asked him one thing or another; I don't know.

Q. Try and remember what you did ask him, if it is at all impressed on your mind.

A. This thing is two years ago, and there are so many things passing through my mind that it would be impossible for me to remember distinctly whether I spoke to him or not. Presumably, I did speak to him. I very likely conversed with him on the subject. I presume some of his remarks may have elicited a remark on my part.

Q. How long did the interview last?

A. Not long; a very few minutes.

Q. Did you ask him how he got that cotton from the warehouses?

A. I did not; not to my present recollection.

Q. Did you ask him when he got it, in order to see whether he got it before or after you had the cotton notes?

191 A. There was nothing said about that.

Q. You did not consider that of enough importance to ask him about it?

A. No, sir.

Q. Did you ask him how many bales he had overhauled?

A. No, sir.

Q. You did not consider that of enough importance to ask him about [it]?

A. No, sir; I had already information on that point from Major Canfield, and I did not doubt at all as to its being correct.

Q. I understood you a little while ago to say that you had made

all these loans to Major Canfield on the understanding that it was cotton of good quality and of full weight. Is that so?

A. Yes, sir.

Q. And you had learned afterwards that some of their cotton had been overhauled, being stained and damaged cotton, and the weight reduced; you had heard that before you saw Mr. Hudson?

A. A very limited number of bales.

Q. All those rumors came to your ears through Mr. Goldman?

A. Yes, sir.

Q. Now, when Mr. Hudson, the man who did the work, came to your bank, you having 1,400 and odd bales of that cotton pledged to secure sixty-odd thousand dollars, did you consider it of sufficient importance to ask him how many bales he had overhauled?

A. I did not consider it of sufficient importance to ask him that question, for the simple reason that I was willing to accept the statement of Major Canfield on that subject.

Q. Notwithstanding Major Canfield had already pledged the cotton notes to your bank—all of them—as representing cotton of good quality and full weight, did that impair your confidence in him any?

A. No, sir.

192 Q. You had such perfect confidence in him that you did not consider it worth while to ask Mr. Hudson, the man who had done this thing, when he stood before your desk, how many bales he had overhauled—is that your answer?

A. I did not deem it worth while to ask him on that subject. The fact of the matter is simply this: That I did not put that weight and importance on those rumors; there was nothing positive about them; they were nothing but rumors, and I simply did not put any credit in them at all after I had seen Mr. Canfield.

Q. Your confidence in him was such?

A. Yes, sir; it is all confidence in cotton loans.

Q. Then your confidence in him was such that when you had an opportunity to verify these rumors or show their falsity by asking one of your own customers up there at your desk at the bank about them, you did not consider it of sufficient importance to ask him?

A. I considered it of sufficient importance to have some of the cotton weighed, which shows that the matter was not altogether immaterial to me: that shows that I was not altogether careless in the matter.

Q. No, but your confidence in him was such that you did not deem it of sufficient importance to ask Mr. Hudson anything about it?

A. I don't know that it was any of my business to ask Mr. Hudson about it; I was satisfied in my mind that we were fully protected after taking an additional margin.

Q. You thought you had margin enough already, and it was not your business to inquire any further?

A. I happened to be satisfied, and he stated to me that we had a surplus in the cotton of at least $13,000. Mr. Canfield said that.

Q. At the time of this interview with Mr. Hudson you had
193 had forty bales weighed?

A. Yes, sir.

Q. Did you hear Mr. Walsh's testimony yesterday?

A. Yes, sir.

Q. Did you hear him read off his weights that he took down there?

A. Yes, sir.

Q. Did you compare them at the time with what you had?

A. Yes, sir.

Q. Did they correspond with the weights you got?

A. Yes, sir.

Q. Have you got that certificate of weights here?

A. No, sir; I have not got it here.

Q. Well, it was those weights that were read out by Mr. Walsh yesterday.

A. I did not check off the numbers.

By Mr. FINKELNBURG:

Q. Is that what you refer to (handing paper to witness)?

A. Yes, sir; there is Walsh's certificate on there.

By Mr. JUDSON:

Q. This is the certificate that Mr. Canfield brought you?

A. Yes, sir.

Q. What do you find is the average weight, as shown, of those forty bales?

A. 393 pounds.

Q. Is that greater or less than the average weight which you assumed was the standard when you made these demand loans?

A. It is less, but we did not hold all those bales; there are some bales marked down here that were not in our possession that some one else held the cotton notes for; we only held those that I marked O. K. there.

Q. How many of those forty did you not hold that were weighed?

A. The paper shows. Whatever is not marked O. K. we did not have.

194 Q. See how many are not marked O K?

A. (Examining paper.) Only four.

Q. Did you tell Mr. Hudson in this interview that you had had some of the cotton weighed?

A. I don't remember that.

Q. Was there anything said in this interview between you and Hudson as to what the average weight was of the bales that he sent back?

A. Not to my recollection.

Q. Did he tell you that he had sent an excess of the cotton to the Factors' and Brokers' warehouse?

A. He sent them to the warehouse; he may have mentioned the Factors' and Brokers'.

Q. Did he tell you that he got the cotton originally from the St. Louis warehouse?

A. I don't know that he told me where he got it from.

Q. Did you ask him where he got it from?

A. I don't think I did; our interview was very brief.

Q. Did you take a piece of paper and a pencil and figure any during that interview?

A. I don't think I did; I may have had a pencil in my hand.

Q. Did you not take this paper and write down 525, multiply it by two, making 1,050, and divide it by 3, making an average of 350 per bale?

A. I don't think I did.

Q. Did you do anything of that kind?

A. I don't recollect.

Q. Have you any recollection on that subject at all?

A. I have a recollection that I did not do it.

Q. But are you prepared to swear that you did not do it?

A. I am prepared to swear; I know I am under oath, and I am very careful of what I say.

Q. So that if Mr. Hudson says you took a piece of paper and a pencil and put down figures you are satisfied he is in error?

195 A. Notwithstanding what Mr. Hudson says, I am giving my own testimony.

Q. You have been examined two or three times before on the subject of that interview?

A. Yes, sir, and I never admitted that.

Q. Is your recollection on the subject of that interview now any better than it was before?

A. I don't know whether I can answer that question.

Q. Have you not stated on your former examinations, both of them, that you were not prepared to testify whether that occurred or not; that it might have occurred, but that you could not recollect?

A. I have said that, to the best of my present recollection, I did not take any pencil and did not do any figuring.

Q. Did you make any remarks to that effect?

A. I don't think I did.

Q. Did he make any or was any allusion made to that in the conversation?

A. As I told you, my interview with Mr. Hudson was very brief, and Mr. Hudson was not very talkative on the subject at all; if anything, he was reticent about the matter.

Q. And how were you, reticent or talkative?

A. I was not very talkative about it.

Q. So that it was an interview between two very reticent persons?

A. That was about it.

Q. As you stated this morning, you were anxious and glad to see him?

A. I was willing to hear what he had to say.

Q. And then you both lapsed into a state of reticence. You did not think it necessary to ask him anything about it?

A. I have told you all that I remember in this matter. I did not get any satisfaction out of him.

196 Q. After this interview with Mr. Hudson did you take any further steps to have this cotton weighed—that is, after the forty bales had been weighed and until the cotton was shipped did you, either directly or indirectly, take any steps to inquire into the condition of that cotton?

A. I had no occasion to do so.

Q. I asked you whether you did or not.

A. I did not.

Q. Did you inquire of any persons as to the truth or falsity of those rumors that you had heard?

A. I made no further inquiry; I never heard anybody else speak about it any further.

Q. Did you see John Hudson after that?

A. No, sir. I was at one time under the impression that I had a second interview with him, but that testimony I must correct; that was a mistake. He had the interview with Mr. Block, and he told me the result of it. That is the way it was. That was long after the suit was brought.

Q. I don't mean that you had an interview with Mr. Hudson, but he was a customer of the bank?

A. He comes there very seldom.

Q. Did you ever see him at the bank after this time?

A. I have seen him at the bank after this time.

Q. I mean during the summer of 1882?

A. I never saw him to speak to him after that. I have never spoken to him on the subject since. I saw him at our office; I saw him afterwards in conversation with Mr. Block.

Q. But I mean during the time before this cotton was shipped?

A. I had no further talk with him on the subject.

Q. Did you make any inquiry of him?

A. No, sir.

Q. Did you make any inquiry of any man concerning that cotton?

A. No, sir; I did not.

197 Q. Did you ever send to have any more of that cotton weighed?

A. No, sir; I had no other cotton weighed except those forty bales.

Q. And they were weighed for you by Mr. Canfield?

A. Yes, sir.

Q. Did you ever see the weigher of this cotton?

A. Yes, sir; I saw him here yesterday.

Q. Did you ever see him before?

A. No, sir; his certificate is on there.

Q. Did you tell Canfield to get the cotton weighed?

A. I think he volunteered to have it weighed for me.

Q. Did you tell him you wanted it done?

A. I may have told him I wanted some of it weighed; I do not remember.

Q. Did you tell him you wanted the cotton reweighed—the repicked cotton—or did you just leave it to him to weigh as much of his cotton as he saw fit?

A. No, sir; the understanding was between us that he was to have the repicked cotton weighed.

Q. Did you tell him that?

A. I think I did.

Q. Do you know whether he did have that weighed or not?

A. I presume from the evidence it was some of the picked cotton, because it was of a lighter weight, and I took it for granted then that it was some of the picked cotton.

Q. When you got this statement of weights from Mr. Canfield, which showed 393 lbs. a bale, some 60 lbs. less than what you have stated was the average that you had in mind when you made the loans, the minimum average, did that have any effect upon your confidence in Mr. Canfield?

A. No, sir; it did not, because it was my impression that what he had done was all legitimate; that he had only the rejected
198 or damaged bales. Furthermore, you will find from this memorandum that I there made a calculation on the basis of the value of the cotton, which shows a bale of cotton then worth about $49, right on that certificate of weights.

Q. You refer to this at the bottom, 393 at 12½ cents?

A. Yes, sir; that is what he said the cotton was worth.

Q. Did you ever examine the current reports of the cotton yourself?

A. Sometimes.

Q. Don't you know that cotton in St. Louis at that time was not worth 12½ cents a pound?

A. Cotton during that season was worth that much.

Q. Well, assuming that cotton was not worth that much, suppose that this cotton was worth ten cents a pound, would your loss have been covered in that case?

A. Not if it was worth only ten cents a pound.

Q. At ten cents a pound it would have been worth $39 a bale.

A. Yes, sir.

Q. You would have $39 security?

A. Yes, sir; and we had $40 on it.

Q. Your original loan was on an average of $45 a bale?

A. Yes, sir.

Q. Commencing back in March?

A. Yes, sir.

Q. Upon that storage was accruing from month to month?

A. Yes, sir.

Q. What is the rate of storage?

A. I do not know; I believe it is 25 cents a bale.

Q. Is it not 50 cents the first month and 25 cents each month afterwards?

A. I believe the 50 cents included the compressing, and then 25 cents after that.

Q. So that this was running along continuously adding to
199 to the amount of the debt?

A. Yes, sir.

Q. That is $45, including storage, and you reduced that amount, say $4, which left $41 loaned on this cotton?

A. The original loan did not average $45; I think it was a little over $44—not quite $45. If you take the trouble to figure it up you will see.

Q. But some of this cotton had been two or three months stored?

A. Yes, sir.

Q. That storage would go against the cotton?

A. Yes, sir; but the — did not state that the cotton was only worth ten cents.

Q. When did you make the figures 393 lbs. per bale at 12½ cents?

A. They were made at the time.

Q. Was Mr. Canfield present?

A. Yes, sir.

Q. He gave you that price?

A. Yes, sir.

Q. Did you go out to have that statement of price verified by cotton merchants?

A. I think it tallied with the statement of price that I saw at the time in the paper; he represented it to be very fine cotton.

Q. Did you consider those loans as safe on that basis, after these developments had come to your knowledge, the basis of 393 lbs. per bale and a loan of $41, as you did the original loan of $45?

A. I considered these loans, after I had the margin and with the explanation of Major Canfield, I considered that loan as safe as any we had in our collateral box. I did not feel the least alarm about it.

Q. You did not know of a dollar's worth of resources of either of these partners aside from the cotton you had in store, or what they had pledged elsewhere?

A. No, sir; and I did not care, because we had cotton enough to cover it, in my opinion.

200 Q. Then at this time, when you considered this a gilt-edge loan and as good as any you had in your box, you had memberships in the Merchants' and Cotton Exchange, of both Norvell and Canfield hypothecated along with this?

A. I had, and what of it?

Q. Well, you had them both?

A. Yes, sir.

Q. In connection with this matter of values, did you make any effort to find out what rejected cotton was worth?

A. I did.

Q. What did you learn on that subject?

A. I was told that rejected cotton was worth perhaps from half a cent to a cent less than others of the respective grades; perhaps on lower grades a little less than half a cent.

Q. After this time when did you next have your attention directed to this business?

A. When the news came here from London.

Q. You mean when the cotton arrived on the other side?

A. Yes, sir.

Q. Did you get a letter from the Deutsche Bank of London?

A. Yes, sir; I got a letter from them in the middle of June, dated the 3rd of June; in it they made inquiry as to the standing, means, &c., of Norvell, Canfield & Co. I brought the letter here and you read it to the jury yesterday. I answered that letter, and a copy is attached to the original. That letter had reference to this matter; it was simply an inquiry from the Deutsche Bank as to their responsibility financially.

Q. This letter of June 15th, 1882, I desire to call your attention to. I understood that this letter of June 15th was written after these interviews with Goldman & Hudson and Canfield, and this calling for margins and payment of margins?

201 A. Yes, sir.

Q. And this weighing business?

A. Yes, sir.

Q. Did you ask Mr. Canfield at the time you wrote this letter as to his capital, or was this based on the information that you had had some time before?

A. It was based on information that I had before, and I may have asked him at the time, too.

Q. Do you recollect as to that?

A. I cannot recollect so as to say positively. When you ask me if I recollect I understand you to mean that I shall give you a positive answer.

Q. If you can.

A. Well, I cannot. I can only tell you what I think. I had spoken to Mr. Canfield about their means, and I may have done it at that time again; it is perhaps likely that I did; and while I think I did I cannot positively swear to it.

Q. Did you ever ask him how much money was invested in their business?

A. Yes, sir; he represented to me that it was in this cotton and other cotton that they were carrying that they had their means invested, margins in cottons.

Q. You say in this letter, "Norvell does not enjoy confidence and respect in the same degree as the other members of the house." Had you heard anything about Norvell at that time to change your opinion since you wrote the letter of April 26th?

A. I had heard of some talk about Norvell—Norvell had failed once or twice before and had not paid off; and I heard all that sort of talk.

Q. When did you hear that about Norvell?

A. I cannot tell when I heard it.

Q. Had you heard that about him before you wrote the

202 letter to the Deutsche Bank in April?

A. I don't think I had; I may have heard of it about that

time, but there was more talk about the matter at the time when these matters of short-weight cotton were talked about, and he was talked about more than anybody else in the firm.

Q. So that when the short-weight matter was talked about they talked about Norvell, too, and about his past career, about his failing before and not paying up his debts?

A. Well, he makes no secret of that himself; he is very open and free about it.

Q. And the people here talked about it, did they not?

A. Well, Mr. Canfield was always very highly spoken of.

Q. But as to Norvell, people said that the short-weight business was in a line with his history?

A. Well, they spoke less favorably of him.

Q. And less favorably of him in connection with this short-weight business?

A. That I am not prepared to answer; I don't recollect that; they spoke of him in general terms.

Q. Was not that talk of people about Norvell, in connection with the short-weight business, in your mind when you wrote these words to Mr. Peach?

A. The talk about Mr. Norvell, the remarks that had been made about him, and not his previous career; that was in my mind when I wrote that, and I wrote that letter conscientiously and to the best of my knowledge and belief.

Q. When did you first hear of this arrangement made by Norvell, Canfield & Co. with McLeod & Reid, of Glasgow?

A. I did not hear of any arrangement having been made
203 with them; I heard of cotton having been sold to them.

Q. From whom did you hear that?

A. About the time that they were ready to ship.

Q. Whom did you hear it from?

A. From Mr. Canfield.

Q. These notes that you held of Norvell, Canfield & Co. were all demand notes?

A. Yes, sir.

Q. Did you ever demand payment of them?

A. I did not, with the exception of the call for margin; I did not call for payment of the note.

Q. Aside from that, did you ever tell them that you wanted the matter closed up, that the bank did not care to carry it?

A. I may have told them that, as the cotton season was drawing to a close, it was not advisable to hold cotton; I may have told them that in the latter part of the season.

Q. Did not Mr. Canfield tell you that Mr. Norvell was over in England and Scotland trying to sell the cotton?

A. He spoke of Mr. Norvell's intention, and I think I heard him say that he expected the news from him every day that he had completed the sale of some of the cotton.

Q. Did he let you know when he received the cable message from Mr. Norvell that he had completed arrangements on the other side with McLeod & Reid and the Bank of Liverpool?

A. I don't know whether he informed me on the receipt of the cablegram; as I stated to you, he mentioned to me one day that Mr. Norvell had sold some of the property over there, and that it would soon be ready for shipment.

Q. Did Canfield offer to sell you the bill of exchange on
204 McLeod & Reid?

A. He may have offered me that.

Q. Were you willing to take it?

A. We had no use for it; we were full of foreign exchange at that time, and our demand for foreign exchange in this town is very limited; we do not buy but one-twentieth part of the selling business that we are offered by our customers.

Q. When this cotton was shipped from St. Louis you took a sight draft on Knoblauch & Lichtenstein, did you not?

A. For the value of that sterling bill, as he had sold it.

Q. When Norvell arrived from Europe you say he stopped in your bank office on his way home?

A. Yes, sir.

Q. And I understood you to say this morning that he then gave you a memorandum of the agreement of Knoblauch & Lichtenstein to buy the exchange, or had you received that before?

A. No; I think he left that with me at the time.

Q. Have you got that now?

A. Here it is (producing paper); he sold that on the 20th of July, 1882.

Q. Examine this sight draft, dated St. Louis, July 25th, 1882, attached to the deposition of C. Knoblauch, and state if you recognize that bill?

A. Yes, sir; that bill was bought by us.

Q. Is that the sight draft that has been talked of as the one in question?

A. Yes, sir; on the 25th of July, drawn against 600 bales of cotton for 6,000 pounds sterling.

Q. Did you forward that sight draft for collection or did you cash it?

A. We gave him credit for it at the time.

Q. Then you cashed it at the time?

A. Yes, sir.

Q. Do you recognize the bill of lading shown you (hand-
205 ing paper to the witness)?

A. I don't know; I can only recognize it by the date and number of bales.

Q. Please examine it and see whether that is the bill of lading that was attached to that sight draft that went forward?

A. We have copies of these things; we generally take copies of them on our book. I believe it is; I can't tell positively until I actually compare it. It looks to me to be that bill of lading, and I think it is.

Q. You say you copy these bills of lading at the bank?

A. Those are my instructions always to the young man in charge to copy them, and as a general thing we have copies of them.

Q. Do you mean a copy of the whole of it?

A. No, sir; only just the substance, giving the date, the steamer line, the marks, the number of bales, and weights, &c.

Q. This sight draft of Knoblauch & Lichtenstein was paid in due course of mail, was it not?

A. Yes, sir.

Q. But you had already given Norvell & Canfield credit for it?

A. Yes, sir; on the day we got the draft.

Q. Do you remember the occasion when this cotton was shipped? Do you remember Mr. Canfield coming in there that morning?

A. I think it was on that morning; I think this cotton was shipped that afternoon late.

Q. Who got out the collateral notes; who had charge of them?

A. I think I gave them out; still I am not positive of that. Mr. Block and myself have access to the collaterals; they are generally in his charge.

Q. Whom did you give the collaterals to?

A. Mr. Canfield was up there.

206 Q. Did he come there to the bank?

A. Yes, sir.

Q. Did you take a receipt from him?

A. Very likely I did.

Q. Have you got a copy of that receipt?

A. No, sir.

Q. Was it torn up when the transaction was ended?

A. Very likely it was returned to him or destroyed.

Q. You gave the cotton notes to him and he came back for the bill of lading and the drafts?

A. Yes, sir; he got 400 of the cotton notes, or thereabouts, from me that day.

Q. This statement shown you represents the daily ledger balance of the firm, with the debit and credit entries, does it not (handing paper to the witness)?

A. Yes, sir; that is an abstract of their account.

Q. Down to the time the account was closed?

A. Yes, sir; down to that time.

Q. Something has been said here about the notes at the Merchants' National Bank. Do you remember the taking up in the month of June, 1882, of a note held by the Merchants' National Bank for thirteen thousand and odd dollars of Norvell, Canfield & Co., taken up by them at your bank?

A. I don't remember; if it was, that statement will show.

Q. This item of $13,195, June 12th, with a credit item of the same day of $14,635, do you remember that?

A. That I don't know; their pass-book will show what it was.

Q. See if you can state from it what it is (handing pass-book to the witness)?

A. It was a sight draft on New York for $14,650 less $14,65, which was taken by our Mr. —— and credited to their account. It was a draft that they offered on New York.

207 Redirect examination by Mr. FINKELNBURG:

Q. If you cashed a sight draft of Norvell, Canfield & Co., in connection with cotton held at the Merchants' National Bank, were the cotton notes transferred to your bank, or how was that done?

A. No, sir.

Q. But the draft was cashed at your bank?

A. Yes, sir; the draft was cashed at our bank, and it was a draft made against a shipment of cotton. They never shipped anything else.

Q. Well, you took that draft?

A. Yes, sir.

Q. Do you know at what rate per bale?

A. We took the draft for its amount—for whatever it called for.

Q. And it called for the usual average amount represented by cotton.

A. When we take these drafts we generally examine the bills of lading and see about the goods shipped under them, be it cotton or anything else.

Q. That you presumably did in this case as in any other case?

A. That is our invariable rule.

Q. If you had an idea that the cotton of Norvell, Canfield & Co. was short-weight cotton would you have discounted or cashed any bills of theirs drawn against the cotton?

A. No, sir; I would not have cashed them.

Q. The 200 bales that came from the Merchants' Bank on the 25th of July you had had no previous connection with at all?

A. No, sir; none whatsoever.

Q. But you cashed the draft that was drawn against those 200 bales?

A. With our 400.

Q. But you took the 200 on the strength of the bill of lading?

A. The first draft; this is another draft.

208 Q. I understand. I am talking of the draft drawn on this shipment of 600 bales, which included the 200 bales of the Merchants' National. You accepted and cashed the draft which was drawn against the 600 bales, being 200 more than you held, did you not?

A. Yes, sir.

Q. And those 200 bales were drawn against at what rate? Do you know how much money you paid to the Merchants' National?

A. Yes, sir.

Q. How much did you pay them?

A. We paid them $9,438.60, if I am not mistaken.

By a JUROR:

Q. This sight draft was on Knoblauch & Lichtenstein?

A. Yes, sir.

Q. It was a mere matter of dollars and cents, and had nothing to do with the cotton; it was a plain bank transaction?

A. What happens every day.

Q. And there was no question about it?
A. No, sir.
Q. You knew you would get that money whether the bales were light or heavy?
A. Yes, sir; it did not enter into my mind at all.
Q. You were just simply cashing a check, as I understand?
A. Yes, sir; we buy those drafts every day.

By Mr. FINKELNBURG:

Q. I want to call your attention [to] the fact that you paid out $9,483 on the strength of the 200 bales which the Merchants' National Bank held, did you not?
A. Yes, sir; it was in payment of the 200 or 209 that the Merchants' National held, or 207.
Q. You advanced, in other words, $9,483 more than you had previously advanced in connection with any cotton of Norvell,
209 Canfield & Co. as against these 200 bales?
A. We advanced that in addition to the risk that we had previously had in the cotton, not questioning for a moment that it was all right.
Q. Will you please figure at what rate you made that additional advance on the 207 bales, $9,483?
A. It is over $45 to the bale.
Q. Is it not considerably more than $45?
A. About $46.
Q. Is not that the usual amount loaned on full-weight cotton?
A. Yes, sir.
Q. Did you know anything about the weight of the 200 bales of cotton which the Merchants' National held?
A. No, sir; nothing whatever.
Q. You simply advanced the nine thousand and odd dollars without any knowledge on that subject?
A. They were included in the bill of lading and I had no positive way of knowing what they were.
Q. Let me recur once more to the transaction of the 13th of June, which has been referred to. Was that transaction of this kind the offer of a bill of exchange drawn against a shipment of cotton by Norvell, Canfield & Co., which you discounted at your bank?
A. Yes, sir; it must have been against a shipment of cotton, because they did not ship anything else.
Q. And you advanced $13,000 upon that?
A. We cashed a sight draft drawn against the shipment.
Q. Where did the cotton come from that was the basis of that shipment?
A. It did not come from our bank.
Q. Did you know anything about the weight of that cotton?
A. No, sir; nothing at all.
210 Q. You simply accepted it on the bill of lading?
A. Yes, sir.

Recross-examination by Mr. JUDSON:

Q. When this sight draft was forwarded by you to New York, on Knoblauch & Lichtenstein, the bill of exchange for this 6,000 pounds on McLeod & Reid was attached to that draft, was it not?

A. Yes, sir.

Q. And the bill of lading was attached?

A. Yes, sir.

Q. And you held that exchange, and that bill of lading, and the collateral papers accompanying it as collateral securing the payment of your sight draft on Knoblauch & Lichtenstein?

A. Yes, sir; that is the way those things are done.

Q. And these documents, and that bill of lading, and that cotton secured the payment of your sight draft on Knoblauch & Lichtenstein to precisely the same extent and just as fully as it secured to them the payment of their draft on McLeod & Reid, of Glasgow; is that correct?

A. Yes, sir.

Q. That is the way you always do that business?

A. Yes, sir.

Q. You did not cash simply the check of Knoblauch & Lichtenstein on their personal credit without regard to the collaterals; it was a sight draft against this shipment?

A. Well, I would not have minded cashing a check on their credit, but I would not cash a check on the shippers' credit unless I have the documents.

Q. But this transaction was a transaction with the shippers secured by the shipment?

A. Yes, sir; secured by the documents.

Q. The weight stated here in this bill of lading is 276,815
211 pounds for 600 bales. At what rate is that per bale?

A. At a rough guess, about 450 pounds or upwards.

Q. The average weight?

A. Yes, sir.

Q. The amount drawn at ten pounds per bale, 6,000 pounds sterling, was about what weight per bale?

A. The amount drawn at ten pounds per bale—that was, at the then current rate of exchange, $48.35 per bale.

Q. Then you paid the Merchants' National Bank at the rate of betwen $45 and $46?

A. Yes, sir.

Q. And the proceeds of this draft, against this shipment, to you was about $84.30.

A. Yes, sir; less exchange than I charged them on the New York draft, which was about a dollar and a half a thousand.

Q. You have just been asked some questions relative to your knowledge of the cotton held by the Merchants' Bank; that was Norvell, Canfield & Co.'s cotton, was it not?

A. Yes, sir; it must have been; they paid for it out of the proceeds of that draft; in fact, I know from Mr. Moore it was their cotton.

Q. Then whatever reports came to you concerning Norvell, Canfield & Co.'s cotton in St. Louis, whatever value you attached to those reports through Mr. Hudson or Mr. Goldman, applied just as much to cotton of theirs at the Merchants' Bank as that held at the Fourth National Bank, for all you know?

A. I am not prepared to answer that.

Q. Well, it would apply just as much to one as to the other, so far as you know?

A. If any one chooses to apply it I presume it would.

Q. Well, when you sent down to give a list of the numbers
212 of the bales you held so that they would only weigh yours, or did Goldman go down and tell you he had weighed Norvell, Canfield & Co.s cotton?

A. Yes, sir; Norvell, Canfield & Co.'s cotton.

Q. He did weigh your cotton, the cotton that you held?

A. I did not know at the time that any body else carried any cotton for them.

Q. So that whatever information you had relative to manipulations of Norvell, Canfield & Co.'s cotton applied as much to cotton held in another bank as in your bank?

A. I presume it did

By the COURT:

Q. When did Mr. Norvell begin doing business with your bank?

A. In 1879.

Q. Did you know his condition as to matters of litigation then pending?

A. I did not.

Q. Did you know that he was in bankruptcy?

A. No, sir.

Q. Did you know anything about his cotton litigation that was pending?

A. No, sir; I heard of that later, long after that.

This was all the evidence introduced on the part of the defendant.

Rebuttal.

The plaintiffs, to further sustain the issues on their part, offer evidence as follows:

A. A. PATEN, recalled for the plaintiffs, testified as follows:

Direct examination by Mr. JUDSON:

Q. You have testified as to your familiarity with cotton prices in St. Louis?

A. Yes, sir.

Q. Was it not your business to be acquainted with them daily?

213 A. It was.

Q. Did you buy much or little cotton in 1882?

A. Over 50,000 bales.

Q. State the value in St. Louis of good middling cotton on the 1st day of June 1882.

A. The official quotations and the value was 12⅛ cents from May 20th to June 10th.

This was all the evidence introduced in the case.

Plaintiffs thereon requested the court to charge the jury as follows:

1. The court instructs the jury to find their verdict for plaintiffs, and to assess their damages at the sum which they shall find from the evidence was the loss sustained by the plaintiffs in consequence of the actual weight of the cotton being less than the weight stated in the bill of lading, which was attached to the bill of exchange, accepted and paid by plaintiffs, not exceeding the sum claimed in petition, with interest from date of filing suit, March 1st, 1883, at rate of six per cent. per annum.

Which request was by the court refused, to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

2. The possession by the defendant of the cotton notes for the bales of cotton pledged by Norvell, Camfield & Company in law vested in defendant the possession of the bales represented by said notes. When, therefore, the 600 bales of cotton in question were shipped to plaintiffs upon bill of lading issued upon surrender
214 of said cotton notes, the defendant continued in law to hold the possession of said cotton until the sight draft drawn against Knoblauch & Lichtenstein was paid, and the said sight draft so drawn against Knoblauch & Lichtenstein was drawn against said shipment as fully as the bill of exchange drawn upon plaintiffs on said shipment.

Which request was by the court refused, to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

3. If the jury believe from the evidence that defendant held in its possession the warehouse receipts (called cotton notes) for the six hundred bales of cotton in question as security for indebtedness due from Norvell, Camfield & Co. to defendant, and while so holding said receipts intrusted the same to one C. H. Camfield, a member of said firm of Norvell, Camfield & Co., for the purpose of consigning said cotton to plaintiffs, and procuring bill of lading therefor, and also certificate of insurance on said cotton, which said bill of lading and certificate of insurance was to be attached to a draft drawn upon plaintiffs, and the proceeds of the collection or sale of said draft were to be applied to the extinguishment of the indebtedness of said Norvell, Camfield & Co. to defendant; and if you find that said Camfield in procuring said bill of lading caused to be stated therein a false and fraudulent statement of the weight of the said 600 bales of cotton, and did cause a false and fraudulent statement of the value of said cotton to be set forth in the certificate of insurance, and defendant, receiving said bill of lading and
215 certificate of insurance from said Camfield, did cause the same

to be attached to the sixty-day bill of exchange drawn upon plaintiffs, and did receive the proceeds therefrom and apply the same to the discharge of the indebtedness to itself from Norvell, Camfield & Co., and thus received benefit from said fraudulent representations of said Camfield while in possession of said notes; and if you further find that plaintiffs were induced to accept and did accept the said bill of exchange by reason of the false representations in said bill of lading and certificate of insurance, and sustained loss thereby, then the court instructs you that the defendant is responsible to plaintiffs in this action for the loss so sustained by reason of said false and fraudulent representations so made by said Camfield in procuring the said bill of lading, and your verdict should be for plaintiffs.

Which request was by the court refused, to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

4. If the defendant, while holding in its possession warehouse receipts (known as cotton notes) for bales of cotton stored in the cotton warehouses of St. Louis, theretofore pledged to it by Norvell, Camfield & Co. as bales of ordinary weight, as shown by the evidence, received notice that a number of bales of said Norvell, Camfield & Company's cotton stored in said warehouses had been manipulated by rebaling, so that the weight thereof had been reduced to less than the ordinary weight of cotton bales, then it was the duty of defendant before permitting any of the said cotton bales of said firm to be shipped to plaintiffs on bill of lading, representing the
216 bales shipped thereon to be of ordinary weight as collateral to bill of exchange upon plaintiffs, sold for its, defendant's, benefit, to ascertain whether said cotton so shipped as of ordinary weight for its, defendant's, benefit was of ordinary weight or not; and if it further appear that the cotton so shipped was represented in the bill of lading as of ordinary weight when in fact it was not of ordinary weight, and that plaintiffs suffered loss in consequence of such deficiency in weights by reason of accepting and paying the bill of exchange drawn against said shipment, then plaintiffs are entitled to recover from defendant the loss so sustained. And notice to the cashier of defendant was in law notice to defendant, and if the cashier received such notice it is immaterial whether he communicated the same to the other officers of the bank.

Which request was by the court refused, to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

5. If the jury believe from the evidence that Camfield, in order to mislead plaintiffs and induce them to accept the bill of exchange for six thousand pounds, caused to be placed in the bill of lading a false statement of the weight of said cotton, and if the cashier of defendant knew that part of the cotton of Norvell, Camfield & Company held by them in pledge and from which the cotton shipped was taken had been rebaled and the bales reduced in weight below the average weight of ordinary bales of cotton, then it was the duty of defendant to ascertain the true weight of the cotton

217 shipped, and if it failed so to do and permitted Norvell, Camfield & Company to defraud plaintiffs by misleading them as to the true weight of said cotton and thereby to benefit defendant, then defendant cannot retain such benefit, to plaintiffs' injury, but is liable to plaintiffs for any damage suffered by them by reason of the deficiency in weight of said cotton.

Which request was by the court refused, to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

6. The court instructs the jury that the knowledge sufficient to charge defendant with responsibility to plaintiffs in this action for the loss sustained by plaintiffs in consequence of the falsity of the statement of weight in the bill of lading does not require knowledge of all the details or the extent of the fraudulent manipulation if they find from the evidence that defendant, by its cashier, prior to the shipment had knowledge of the fact of the manipulation and could have readily ascertained the details and extent if it had seen proper to do so.

Which request was by the court refused, to which refusal of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

7. The fact that a part of the proceeds of the sale of the bill of exchange drawn on plaintiffs, received by defendant, was applied to payment of a note of Norvell, Camfiled & Company due the Merchants' National Bank, and that part of the cotton bales so

218 shipped had been pledged to that bank, constitutes no defence to this action if it appear that the 600 bales were all shipped on one bill of lading and that such shipment was made for defendant's benefit and the proceeds thereof, after paying such note, applied to payment of its claims against Norvell, Camfield & Co.

Which request was by the court refused, to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

8. If the jury find for the plaintiffs they will assess their damages at the sum which they shall find from the evidence was the loss sustained by the plaintiffs in consequence of the actual weight of the cotton being less than the weight stated in the bill of lading which was attached to the bill of exchange accepted and paid by plaintiffs, not exceeding the sum claimed in petition, with interest from date of filing suit, March 1st, 1883, at rate of six per cent. per annum.

Which request was by the court refused, to which ruling of the court plaintiffs duly excepted at the time.

The court thereupon charged the jury as follows:

Charge to the Jury.

There seems to be no dispute as to many of the facts in this case. The cotton in question went forward to the plaintiffs under the bill of lading and hypothecation, on which the plaintiffs had a right to rely. It also appears that the statements as to weights contained in

the bill of lading were false, whereby a loss to the plaintiffs occurred as stated in their petition. Who is responsible therefor? Unquestionably Norvell, Camfield & Co. But is the defendant liable? It seems that the defendant had advanced on cotton notes pledged to it a sum of money, and entrusted the cotton notes to the pledgeor for the purpose of forwarding the same. The same were forwarded with the bill of lading and hypothecation, whereby the plaintiffs, as acceptors of the bill, received the same in the faith that said bill of lading was a true statement as to weight, &c.

There seems to be no doubt that the plaintiffs, relying on the bill of lading, accepted the draft accompanying the same, and consequently had a right to trust to the correctness as to the weight which they indicated.

That there was a fraud perpetrated the jury will probably have no difficulty in determining. But who is responsible therefor? There is no doubt where the ultimate responsibility rests. In this case it is to be determined whether there is an intermediate liability, to wit, the connection of the defendant with the fraud perpetrated. If the defendant knew of the fraud, to wit, the short weights, and with the intent to secure to itself payment of indebtedness by Norvell, Camfield & Co., caused said bill of lading, together with the bill of exchange connected therewith, the proceeds of which it was to receive, to be forwarded, then it, the defendant, is responsible for the loss incurred; otherwise not.

The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false on the shipment; and, if so, did it assent thereto with the intent to defraud the plaintiffs, as acceptors or drawees, of the bill? Whatever the cashier of the defendant bank did the defendant is liable for. Hence, the inquiry may be directed to the ascertainment of his knowledge and intent, and also the knowledge and intent of any officer of the defendant.

Did the defendant, through its cashier or any other officer, know that there were false weights sent forward in the bill of lading and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff? Is there any testimony of any such fradulent knowledge or intent upon the part of the defendant? There is no testimony showing that there was any such fraudulent intent on the part of the defendant; therefore your verdict will be for the defendant.

To all that part of the charge commencing with the words "But who is responsible therefor? There is no doubt where the ultimate responsibility rests," and continuing to the end of the charge, plaintiffs duly excepted at the time.

To all that part of the charge contained in the words "The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false on the shipment; and, if so, did it assent thereto with the intent to defraud the plaintiffs as acceptors or drawees of the bill?" plaintiffs duly excepted at the time.

To all that part of the charge contained in the words "Did the

defendant, through its cashier or any other officer, know that there were false weights sent forward in the bill of lading and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff?" plaintiffs duly excepted at the time.

221 To all that part of the charge contained in the words "Is there any testimony of any such fraudulent knowledge or intent upon the part of the defendant? There is no testimony showing that there was any such fraudlent intent on the part of the defendant; therefore your verdict will be for the defendant," plaintiffs duly excepted at the time.

The jury, under the instructions of the court, rendered a verdict for the defendant.

Thereafter, on the 7th day of April, 1884, plaintiffs filed a motion for a new trial as follows:

Now come plaintiffs and move the court to set aside the verdict and for a new trial, and for reasons therefor state—

First. The court erred in its declaration of law in instructing the jury to find for the defendant.

Second. The court erred in its instructions to the jury.

Third. The court erred in refusing the declarations offered by the plaintiffs.

Which was by the court overruled on the 7th day of April, 1884; to which ruling of the court plaintiffs duly excepted at the time.

And thereafter plaintiffs present this their bill of exceptions, and ask that the same may be signed, sealed, and made part of the record herein, which is done during the said March term on the 6th day of May, 1884.

SAMUEL TREAT, *Judge.*

222 Know all men by these presents that we, D. M. McLeod & A. A. A. Reid, as principals, and J. H. Overall and F. N. Judson, as sureties, are held and firmly bound unto the Fourth National Bank of St. Louis in the full sum of five hundred dollars, to be paid to the said Fourth National Bank of St. Louis, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixth day of May, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at the March term, 1884, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Donald M. McLeod and A. A. A. Reid, plaintiffs, and the Fourth National Bank of St. Louis, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Fourth National Bank of St. Louis, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the

said plaintiffs shall prosecute said writ of error to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

DONALD M. McLEOD,
A. A. A. REID,
By F. N. JUDSON, *Attorney.* [SEAL.]
J. H. OVERALL. [SEAL.]
F. N. JUDSON. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved by—
SAMUEL TREAT.

[Endorsed:] No. —. United States circuit court, eastern district of Missouri. D. M. McLeod & A. A. A. Reid *vs.* Fourth Nat'l Bank, St. Louis. Bond, $500. Filed 6th day of May, 1884. A. P. Selby, clerk.

223 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri. }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings had in case No. 2140 of Donald M. McLeod *et al.*, plaintiffs, against Fourth National Bank of St. Louis, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court at office, in the city of St. Louis, in said district, this 17th day of July, in the year of our Lord eighteen hundred and eighty-four.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk of said Court,
By T. L. CRAWFORD, *Deputy.*

Endorsed on cover: E. Missouri C. C. U. S. No. 268. Donald M. McLeod and A. A. A. Reid, plaintiffs in error, *vs.* The Fourth National Bank of St. Louis. Filed July 21st, 1884.

APR 25 1887
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1886.

D. M. McLEOD AND A. A. A. REID,
Plaintiffs in Error,

vs.

THE FOURTH NATIONAL BANK OF ST. LOUIS,
Defendant in Error.

No. 968.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT, ASSIGNMENTS IN ERROR, BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR.

FREDERICK N. JUDSON,
WITH WHOM IS JOHN H. OVERALL,
For Plaintiffs in Error.

122-528

IN THE

Supreme Court of the United States

OCTOBER TERM, 1886.

D. M. McLEOD AND A. A. A. REID,
Plaintiffs in Error,

vs.

THE FOURTH NATIONAL BANK OF ST. LOUIS,
Defendant in Error.

No. 268.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT, ASSIGNMENTS IN ERROR, BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR.

FREDERICK N. JUDSON,
WITH WHOM IS JOHN H. OVERALL,
For Plaintiffs in Error.

Nixon-Jones Printing Co., 210 and 212 Pine Street, St. Louis.

INDEX.

STATEMENT 1
Pledge of cotton to defendant 2
Fraudulent re-baling of cotton 3
Defendant introduces Norvell abroad 5
Rumors of "shortage" reach defendant 6
Margin demanded by defendant 7
Cotton weighed by Camfield for defendant 8
Hudson the "picker" explains the rebaling and shortage to defendant 8
Norvell in Europe 9
Agreement of plaintiffs in error to accept draft 11
The shipment to plaintiff 11
False weight inserted in bill of lading. 11
Defendant the beneficiary of the fraud 12
Plaintiffs pay draft relying on bill of lading 13
The fraud discovered 14
The pleadings and trial 14

CHARGE OF THE COURT 15

ASSIGNMENTS OF ERROR 17

BRIEF 23
Summary of undisputed facts 23
Points involved 25
Defendant liable for fraud of Camfield 26
Defendant liable on its own knowledge of fraud 27

ARGUMENT 29
Law of negotiable paper not involved 29
Camfield, the agent of defendant, in exchanging cotton notes for bill of lading 30
Pledgors only nominal interest in cotton pledged 33
Defendant the beneficiary of the fraud 36
Defendant responsible for Camfield's fraud 38
Defendant's knowledge of shortage of weight 44
Instructions refused 44
Hudson's and Biebinger's testimony compared 52
Defendant's willful blindness to facts 56
Defendant's knowledge of fraudulent shipment 58
The Merchants Bank cotton 59
The law of notice 60

IN THE

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OCTOBER TERM, 1886.

DONALD M. McLEOD AND A. A. A. REID,
Plaintiffs in Error,
vs.
THE FOURTH NATIONAL BANK OF ST. LOUIS.

No. 268.

STATEMENT.

This is a suit by plaintiffs in error, citizens of Great Britain, merchants of Glasgow, to recover from defendant $9,000, the damages sustained by them in consequence of the shortage of weight in six hundred bales of cotton, shipped to them by defendant as bales of full weight, with knowledge on defendant's part of such shortage; plaintiffs having accepted and paid bill of exchange, drawn upon them against the shipment, relying on the weight of cotton set forth in the bill of lading attached to the bill.

The material facts of the case as set forth in the record are not in controversy, and are substantially as follows: —

THE PLEDGE OF COTTON TO DEFENDANT.

In the months of March and April, 1882, the defendant bank in St. Louis loaned to a copartnership of cotton buyers, composed of one L. C. Norvell, one John Camfield and one Eimer, doing business under name of Norvell, Camfield & Co., $64,500 upon the pledge of 1,462 bales of cotton, then in store in cotton warehouses of St. Louis, the several loans aggregating said amount being represented by demand notes of the firm, dated at sundry times between 14th of March and 26th of April of that year (Rec. p. 41, 114), and the pledge was effected in the usual manner by transferring and delivering to the bank the warehouse receipts for the bales of cotton, known as "cotton notes," each bale being represented by a separate cotton note.

The form of cotton note was as follows: (Rec. p. 28.)

(No. of bale.) Received in store of ....., one bale of cotton in apparent good order of the above number and following marks, (marks if any) deliverable to bearer upon return of this receipt, and payment of warehouse charges, risk of fire excepted.

Signed,

.....Secretary.

On the back is stamped or printed the word "cotton note."

The cotton note identifies the bale, which it represents by a number, corresponding with number upon the tag attached to the bale. The cotton note does not specify the weight of the bale, but the recognized *average weight* among bankers and dealers is from 450 to 500 pounds, (Rec. p. 91); in the cotton year 1881–1882, the average weight was said to be 488 pounds (Rec. pp. 62, 63), and so rare was a deviation from this average weight (one or

two bales in a hundred or more under 400 pounds) that bankers in St. Louis in all cases assumed in accepting cotton notes as collateral, that bales were of average weight (Rec. pp. 91, 115). A bale of over 300 pounds, however, is said to be of *merchantable* weight, that is subject to be tendered in performance of contract, payment of course being made by the pound. (Rec. p. 62.) In the pleadings, through clerical error, the term *merchantable* bale is sometimes used instead of *average* bale.

As will be readily computed, the loan by defendant was at rate of over $44 per bale; the bales being assumed to be of average weight, and the cotton of good medium grade; the cotton being subject to the lien of storage charge at rate of fifty cents, for first month, and twenty-five cents, for each succeeding month, and on this basis the usual margin was left for the protection of the bank.

In April, 1882, middling cotton in St. Louis market ranged from 11 to 11 1–2 cents per pound, and "rejected" cottons, or cottons of mixed grade ranged from three quarters of a cent to a cent and a half cheaper. (Rec. p. 93.)

THE REBALING AND FRAUDULENT MANIPULATION OF COTTON.

The bales pledged to the bank by Norvell, Campfield & Company however were not of average weight nor did they all contain good medium cotton; but were made by rebaling cotton taken from original bales of average weight under the following circumstances.

Norvell, Campfield & Company, having purchased, and on store in the St. Louis Cotton Compress Company, one of the cotton warehouses of St. Louis, 1085 bales of average weight, but "rejected" cotton: *i.e.*, of mixed grades, withdrew them from the warehouses (without, as it appeared, delivering up all the cotton notes therefor), and sent them to a cotton "pickery" conducted by one Hudson, for sorting and rebaling. Hudson acting under the

instructions of Campfield, one of the firm, opened the bales, separated the cotton of the different grades, and rebaled the cotton, putting each grade by itself. To quote Hudson's testimony. (Rec. p. 29.)

"I received the cotton. I would open about ten bales "and separate the grades, and put the different grades to- "gether, and return them to the warehouse *under the same* "*number*. I couldn't return all the cotton that I received "in the bales, because I could not make them merchantable "bales, and put them in shape, weighing as much as they "did. When they were returned, they did not weigh with- "in about 120 to 130 pounds per bale as much when I re- "ceived them, as when I sent them back. * * * The "excess was baled in the same manner and sent to the "Factors and Brokers' warehouse." (Another warehouse.) * * *

The same tags which were on the bales when received were on them when returned to the warehouse from which they came (Rec. p. 29), while the new "excess bales" were sent to the other warehouse, where tags were placed upon them and new cotton notes in the usual form given for them to Norvell, Camfield & Company (Rec. p. 30).

THE SUMMARY OF THESE "REBALING" OPERATIONS

at the Hudson "pickery" under Camfield's directions (Rec. p. 35), was, that during the months of March and April, 1882, 1,085 bales were received from the St. Louis Cotton Compress warehouse of aggregate weight of 558,704 lbs., making an average weight per bale of 514 lbs.; that the aggregate weight of the same bales as returned to the same warehouse after being over-hauled and rebaled was 376,512 lbs., making an average weight per bale of 347 lbs., and that the number of "excess bales" made out of the cotton taken from the original bales and sent to the Factors and Brokers' warehouse, was 514 of aggregate weight of 174,074, making an average per bale of 325 lbs.

The dates of these rebaling operations (Rec. p. 35), thus creating 1,599 bales out of 1,085 original bales, correspond closely with the dates of the pledging of 1,462 cotton notes by Norvell, Camfield & Company to the defendant bank as collateral to the loan of $64,500. (Rec. p. 41.) Thus the first lot of these bales was received at the pickery for rebaling on March 9th, 1882, and the last lot on April 24th, 1882 (Rec. p. 35), while on March 14th, 1882, the first lot of cotton notes seems to have been pledged at the bank, and the last of the 1,462 notes was pledged to the bank on April 26th, 1882. (Rec. p. 41.)

DEFENDANT'S INTRODUCTION OF NORVELL ABROAD.

Immediately after these rebaling operations and the pledging of the cotton notes to defendant, L. C. Norvell, one of the firm of Norvell, Camfield & Co., left St. Louis for Europe, for the purpose of "extending the business connections of his firm" and "to solicit orders for sale of their cotton" (Rec. pp. 23,51), borrowing from defendant on his individual note, $600.00, secured by his certificates of membership in Merchants Exchange and Cotton Exchange of St. Louis (Rec. p. 41). He received from defendant the following general letter of introduction: (Rec. p. 16.)

FOURTH NATIONAL BANK OF ST. LOUIS,
ST. LOUIS, April 26, 1882.

To whom it may concern:

This is to introduce in the bearer, Mr. L. C. Norvell, senior of the firm of Norvell, Camfield & Co., cotton-buyers of this city.

Mr. Norvell is regarded by cotton men of this city as an excellent judge of the staple, and from our own experience having handled their domestic bills against purchasers of cotton to a large extent, we know the firm to have given general satisfaction to their patrons.

Mr. Norvell visits England and the Continent with a view

of extending the firm business connections abroad, and believing them to be reliable and trustworthy, we cheerfully commend their house to the trade in their line.

Very Respectfully,

F. W. BIEBENGER,
Cashier.

(Seal of Fourth Nat. Bank.)

And also the following to the Deutsche Bank, Berlin, London Agency, the London correspondent of defendant: (Rec. p. 23.)

GENTLEMEN: "Permit me to introduce to you in the "bearer of this, Mr. L. C. Norvell of the firm of Norvell, "Camfield & Co., cotton buyers of this city. Mr. Nor- "vell visits England with a view of forming business con- "nections, soliciting orders from spinners and others for "the purchase of cotton, and in pursuit of this object may "have occasion to consult and advise with you.

"I would bespeak for Mr. N. your kind attention and "any favors shown him will be duly appreciated.

"Yours most respectfully,

(Seal of 4th Nat. Bank.) "F. W. BIEBENGER, *Cashier.*"

Norvell, armed with these letters from defendant, and also with letters secured on the following day, April 27, from the Secretaries of the St. Louis Merchants and Cotton Exchange,[1] proceeded on his way to Europe to negotiate sale of the cotton.

RUMORS OF SHORT WEIGHTS REACH DEFENDANT.

Meanwhile in St. Louis rumors began to be circulated among cotton men as to cotton bales of Norvell, Camfield & Co., being short weight (Rec. p. 65), and in this connections rumors derogatory to Norvell seem also to have been

[1] It appears from the dates of these letters that Norvell was mistaken in his recollection, as to their being shown to defendant before defendant's letters of April 26 were written.

current (Rec. p. 133); and during latter part of May, Mr. Goldman, a cotton merchant, director in the St. Louis warehouse and a customer of defendant, hearing of these short weight rumors, informed Biebenger, defendant's cashier that "he had heard that there had been some cot-"ton picked up of Norvell, Camfield & Co., and asked "him if he held any notes." (Rec. p. 66.) At Biebengers request, Goldman had the warehouse superintendent weight some 15 or 16 bales, and reported the weights being between 390 and 400. Biebenger looked over the cotton notes of the bank in Goldman's presence (Rec. p. 66), and reported that he found a few of them.

ADDITIONAL MARGIN DEMANDED BY DEFENDANT ON ACCOUNT OF SHORTAGE RUMORS.

Immediately upon this, on May 26, Biebenger served notice upon Camfield to put up an *additional margin* of $4 per bale, in addition to paying upon the accrued interest on the various notes (the interest aggregating some $700 or $800, Rec. 105, 121, 123).

Although on direct examination (Rec. p. 105) of Mr. Biebenger, it is intimated that the accumulating storage was one reason for this call for margin, on cross-examination (Rec. p. 123) he admits that the "rumors" were the cause, saying:

"I admit, and I told you so, that I called for additional "margin, because Mr. Goldman had informed me that the "rumor was that there was some short or light weight cot-"ton. The storage really had nothing to do with it, it "entered into the calculation as a matter of course."

At date of the call for margins, cotton was advancing in value, having advanced a quarter to three-eighths of a cent since loans were effected.

Mr. Biebenger testified (Camfield's testimony was not obtainable as he had absconded after discovery of the fraud)

that Camfield on being informed of these rumors of short weight admitted that some "rejected" or "cow-eaten" bales had been sent to the pickery, to be put in shape, but that this was a "very limited number," and by far the greater number was of "very fine quality," and "had not been handled or over-hauled," and that he (Camfield) volunteered to have some of the cotton weighed, and afterwards brought up a statement of the weight of 40 bales. This statement furnished by Camfield, shows average weight of 393 pounds. (Rec. p. 72.)

The margin and interest thus called for was paid by Camfield on different dates (Rec. p. 122), payment being completed on 2nd of June; $950 of the amount being raised by a new demand note secured by 10 additional cotton notes, and Camfield's certificates of membership in the Merchants' and Cotton Exchanges.

EXPRESS NOTICE OF SHORTAGE TO DEFENDANT FROM HUDSON, THE COTTON "PICKER."

Hudson, the pickery proprietor, who had rebaled the cotton, having learned from Camfield, that he had been called on for margins by the bank, went to the bank (to quote his words), (Rec. p. 37) on cross-examination,

"To let them (the bank) *know exactly what I did to the* "*cotton.* I understand there would be some trouble about "the cotton, and I went there to let them know *all about* "*it.*"

He went to the bank during business hours, and told Mr. Biebenger (Rec. p. 33): —

"I wanted to state to him what I did to the cotton. He "asked me what I did, and I told him in sending the cot- "ton back I did not put as much in a bale. I told him the "cotton did not weigh as much as it did when I received "it, and then he asked me, he says: 'Suppose you got two

" bales weighing a thousand pounds, you make three bales " out of that,' and I told him that is about the way it was " done."

He and, as he remembered, Mr. Biebenger made calculation to that effect on a piece of paper. No one was present at the conversation, but Mr. Biebenger and himself. Mr. Biebenger did not ask the number of bales manipulated, nor did he (Hudson), state the number.

Mr. Biebenger admits the interview with Hudson, and the latter's statement in substance as to what he did to the cotton (Rec. pp. 106, 124, 126), but did not recollect the figuring on paper, and he had such confidence in Camfield and deemed himself fully protected by the additional margin, so he did'nt consider it of sufficient importance to inquire of him how many bales had been " overhauled." (Rec. p. 125.)

NO FURTHER INQUIRY BY DEFENDANT.

No further inquiry of Hudson or any one else was made by Biebenger or any one on behalf of defendant, and no investigation of any kind was made or attempted by them to ascertain the actual extent of the shortage, although stocks of cotton were growing lighter daily, as the season was drawing to a close, and bales were promptly weighed, at trifling expense, on request (Rec. p. 76). Biebenger testified that he gave the matter no concern, " felt no uneasiness," being satisfied with Camfield's statement, that the defendant was sufficiently secured by the increased margin.

NORVELL IN EUROPE.

Meanwhile, Norvell had arrived in Europe and proceeded to use defendant's letters (*supra*) " in extending his firm's business connections," and " soliciting orders " for their

cotton, and presented defendant's letter (*supra*) to defendant's London correspondent, the Deutsche Bank. The manager having given him a letter to their Liverpool agent (Rec. p. 23) as "warmly recommended" by defendant, wrote to defendant (Rec. p. 24) asking confidential information concerning the "means, trustworthiness and standing" of Norvell, Camfield & Co. Receiving this letter of inquiry in due course, Biebenger (defendant's cashier) writes the following letter on June 15, after the disclosures above detailed (Rec. p. 24):—

ST. LOUIS, June 15, 1882.

Deutsche Bank, Berlin, London Agency, London:

GENTS — In answer to yours of 3d inst., inquiring about means, trustworthiness and standing of Norvell, Camfield & Co., of this city, I desire to say that Mr. Camfield, one of the partners, informs me that the capital invested in their concern is about $15,000, owned almost entirely by himself and the junior partner, Mr. Eimer. While Norvell, the senior of the firm, is well regarded as an excellent judge of cotton, he personally does not enjoy the confidence and respect in the same degree as the other members of the house. Nevertheless, I am of the opinion that so long as Mr. Camfield remains in the firm, he will carry out its contracts and obligations faithfully and to the best of his ability. Respectfully,

F. W. BIEBENGER, *Cashier.*

Mr. Biebenger testified (Rec. p. 133) that while he did not demand payment of the notes, he may have told Camfield that as the cotton season was drawing to a close, it was advisable to sell the cotton, and that Camfield spoke of Norvell's intention and said he expected news from him every day, that he had completed the sale of some of the cotton.

PLAINTIFFS IN ERROR AGREE TO ACCEPT DRAFT WITH SHIPMENT OF 600 BALES.

Meanwhile Norvell had called on plaintiffs in Glasgow, in the latter part of June, and presented his credentials, in-

cluding the general letter of introduction from defendant (Rec. p. 11), and the letter from the Deutsche Bank at London to their correspondents, and on or about 7th of July, plaintiffs, having negotiated sale of the cotton, agreed with Norvell to accept the sixty day bill of exchange of his firm for £6,000, against shipment of 600 bales of cotton; bales on Norvell's statement to contain about 500 lbs. (Rec. p. 12.)

After making similar agreement with S. and E. Smith, merchants of Liverpool, as to 500 bales of cotton (whose claim against defendant is also in controversy), Norvell returned to America. Learning on his arrival in New York that defendant declined to buy their 60 day foreign bills, he sold the bills to Knoblauch & Lichtenstein, bankers of New York, having first exhibited to them the letter of introduction from defendants' cashier, addressed "to whom it may concern" (Rec. p. 25).

THE SHIPMNET TO PLAINTIFFS IN ERROR.

Meanwhile Camfield and defendant, having been advised by Norvell of this sale to Knoblauch and Lichtenstein, proceeded on July 25, before Norvell's return, with the shipment to plaintiffs. It was made in the following manner: —

Norvell, Camfield & Co. had at this time a demand note in the Merchants' National Bank of $9,483.60, secured by 207 or 209 cotton notes (Rec. p. 100). As this was the only pledge of the firm's cotton at that bank, it was determined to include it in this first foreign shipment with the cotton of defendant.

FALSE WEIGHT INSERTED IN BILL OF LADING.

Accordingly defendant intrnsted to Camfield ~~393~~ 400 of its cotton notes, and he accompanied by the messenger of the Merchants' Bank (Rec. pp. 100, 102), proceeded to the

railroad shipping office (Rec. pp. 58, 59), and delivered to the freight agent the 600 cotton notes; 430 of the St. Louis Warehouse and 170 of the Factors and Brokers. The freight agent thereupon made out the through bill of lading (Rec. p. 17) for the 600 bales under the directions given him by Camfield. The weight thus inserted in the bill of lading by Camfield was 276,815 pounds (*average weight of over 460 pounds*). The bill of lading was in usual form, and contained the usual condition, "Weight, measure, etc., unknown."

Camfield caused to be attached to the bill of lading, a certificate of insurance, valuing cotton shipped at $33,845, and also power of hypothecation in usual form (Rec. p. 18). He also forwarded by mail to plaintiffs in error, invoices of the cotton, and detailed certificates of weights, signed by one C. E. Haggerty, purporting to give weight of each bale, and aggregating the weight stated in the bill of lading, 276,815 pounds (Rec. pp. 20, 22).

Mr. Haggerty testified on the trial (Rec. pp. 60, 62), that he never weighed or saw the cotton, and that he signed the statements handed him by Camfield presuming "it was all right."

PROCEEDS OF SHIPMENT COLLECTED BY DEFENDANT AND ITS OWN DEBT PAID THEREWITH.

Camfield brought the bill of lading and accompanying documents to the defendant bank, and there they were attached to a bill of exchange drawn in name of Norvell, Camfield & Company, as drawers, on plaintiffs in error for sum of £6,000, payable sixty days after date (Rec. p. 16). At same time a sight draft was drawn by Norvell, Camfield & Co., on Knoblauch & Lichtenstein as per the agreement made by Norvell for the proceeds of the bill at agreed rate of exchange $29,010. This latter sight draft was cashed by defendant, and the proceeds less exchange, $28,973.74

(Rec. p. 47) placed to credit of Norvell, Camfield & Co. From this amount a cashier's check for $9,483.60 was given to the messenger of the Merchants' National Bank by defendant, and the balance $19,490.14 was applied by defendant to payment of its demand notes, secured by the cotton shipped. It was testified by Mr. Biebenger, defendant's cashier, that the proceeds *more than paid* defendant's loan upon the cotton, leaving balance to credit of Norvell, Camfield & Co. (Rec. p. 112.)

Other shipments followed, 500 bales to S. & E. Smith in Liverpool a few days later, and a shipment to Inman, Swan & Co., of New York, on August 28 (Rec. p. 48), both of these shipments being wholly of defendant's cotton (Rec. p. 57), and by these several shipments all of the 1,472 bales at one time in defendant's possession were "unloaded;" and the result of the whole business was, that the entire indebtedness of Norvell, Camfield & Co. to defendant (aggregating originally $64,500.00 and reduced by the margin payment), was *paid in full*, principal and interest, from the proceeds of these shipments, and after such liquidation there was left to Norvell, Camfield & Co.'s credit on August 29, 1882, a balance of $5,089.51.

PLAINTIFFS IN ERROR PAY THE DRAFT.

The sight draft on Knoblauch & Lichtenstein was duly paid on presentation (Rec. p. 25), (Knoblauch & Lichtenstein having no knowledge of the facts hereinbefore stated as to the manipulation of the cotton), and the 60-day draft on plaintiffs in error, with documents attached, was forwarded to Glasgow, and in due course of mail was presented for acceptance (Rec. pp. 12, 13). Plaintiff's in error having no knowledge or suspicion of any fraud, and relying upon the statement of weights contained in the bill of lading, and all the "documents" appearing in regular form, and "believing that they were doing business with a

"firm, that was reliable and trustworthy, as recommended by "their bankers," accepted the bill, relying upon the accuracy of the weights as stated (Rec. p. 13).

THE FRAUD DISCOVERED.

On August 29 the 600 bales of cotton arrived in Glasgow by steamer, and plaintiffs in error, to obtain possession, were compelled to pay the bill of exchange. Without such payment they could not obtain the cotton (Rec. p. 14). On the same day, as soon as the cotton was weighed on delivery from the steamer, a great shortage in weight was discovered. Each bale was carefully examined, and there was no sign of breakage or tampering during transit (Rec. p. 15). The aggregate gross weight was only 206,043 pounds, showing a deficiency of 70,772 pounds, as compared with the weights stated in the bill of lading (Rec. p. 15).

DAMAGE OF PLAINTIFFS IN ERROR.

Notwithstanding cotton had advanced in price and plaintiffs in error used every means to realize the best possible price, their actual loss from deficiency in weights alone (although a large part of the cotton was of inferior grade), was $8,722.15.

Immediately upon discovery of fraud, plaintiffs in error cabled to St. Louis, but by that time, as already stated, the fraud had been successfully accomplished, the cotton held by the bank had all been shipped; the balance realized after paying the bank in full drawn out; the firm of Norvell, Camfield & Co. abandoned business and Camfield disappeared to parts unknown (Rec. p. 43, 44). Early in January, 1883, one of plaintiffs in error, in company with a representative of S. and E. Smith, of Liverpool, made demand upon defendant, but defendant declined to recognise any obligation in the matter (Rec. p. 64).

Plaintiffs in error, in their petition setting out the substance of facts herein detailed, alleged that defendant knew of the shortage of weight, and with such knowledge was party to the shipment of the cotton as full weight, and by accepting and retaining the proceeds, was the beneficiary of the fraud perpetrated upon plaintiffs in error.

The answer was a general denial.

The court overruled defendants demurrer to the evidence at close of plaintiffs' testimony (Rec. p. 85), but at the close of all the testimony the court refused all the instructions requested by plaintiff in error, and directed the jury to return a verdict for defendant in the following charge: —

CHARGE OF THE COURT DIRECTING VERDICT FOR DEFENDANT.

There seems to be no dispute as to many of the facts in this case. The cotton in question went forward to the plaintiffs under the bill of lading and hypothecation, on which the plaintiffs had a right to rely. It also appears that the statement as to weights contained in the bill of lading were false, whereby a loss to the plaintiffs occurred as stated in their petition. Who is responsible therefor? Unquestionably Norvell, Camfield & Co. But is the defendant liable? It seems that the defendant had advanced on cotton notes pledged to it a sum of money, and entrusted the cotton notes to the pledgor for the purpose of forwarding the same. The same were forwarded with the bill of lading and hypothecation, whereby the plaintiffs, as acceptors of the bill, received the same in the faith that said bill of lading was a true statement as to weight, etc.

There seems to be no doubt that the plaintiffs, relying on the bill of lading, accepted the draft accompanying the same, and consequently had a right to trust to the correctness as to the weight which they indicated.

That there was a fraud perpetrated the jury will probably have no difficulty in determining. But who is responsible therefor? There is no doubt where the ultimate responsibility rests. In this case it is to be determined whether there is an intermediate liability, to-wit, the connection of the defendant with the fraud perpetrated. If the defendant

knew of the fraud, to-wit, the short weights, and with the intent to secure to itself the payment of indebtedness by Norvell, Camfield & Co., caused said bill of lading together with the bill of exchange connected therewith, the proceeds of which it was to receive, to be forwarded, then it, the defendant, is responsible for the loss incurred; otherwise not.

The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false on the shipment; and, if so, did it assent thereto with the intent to defraud the plaintiffs, as acceptors or drawees of the bill? Whatever the cashier of the defendant bank did, the defendant is liable for. Hence the inquiry may be directed to the ascertainment of his knowledge and intent, and also the knowledge and intent of any officer of the defendant.

Did the defendant, through its cashier or any other officer, know that there were false weights sent forward in the bill of lading, and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff? Is there any testimony of any such fraudulent knowledge or intent upon part of defendant? There is *no testimony* showing that there was any such fraudulent intent on the part of the defendant; therefore your verdict will be for the defendant.

ASSIGNMENT OF ERRORS.

The errors assigned by plaintiffs in error are as follows (Rec. p. 1): —

The refusal of the court to give the following instructions requested by plaintiff in error: —

(Rec, p. 140.) *First.* The court instructs the jury to find their verdict for plaintiffs, and to assess their damages at the sum which they shall find from the evidence was the loss sustained by the plaintiffs in consequence of the actual weight of the cotton being less than the weight stated in the bill of lading, which was attached to the bill of exchange, accepted and paid by plaintiffs, not exceeding the sum claimed in petition, with interest from date of filing suit, March 1, 1883, at rate of six per cent. per annum.

The refusal of the court to give the following instruction to the jury requested by plaintiff in error: —

(Rec. p. 140.) *Second.* The possession by the defendant of the cotton notes for the bales of cotton pledged by Norvell, Camfield & Company in law vested in defendant the possession of the bales represented by said notes. When, therefore, the 600 bales of cotton in question were shipped to plaintiffs upon bill of lading issued upon surrender of said cotton notes, the defendant continued in law to hold the possession of said cotton until the sight draft drawn against Knoblauch & Lichtenstein was paid, and the said sight draft so drawn against Knoblauch & Lichtenstein was drawn against said shipment as fully as the bill of exchange drawn upon plaintiffs on said shipment.

The refusal of the court to give the following instruction requested by plaintiffs in error: —

(Rec. p. 140.) *Third.* If the jury believe from the evidence the defendant held in its possession the warehouse

receipts (called cotton notes) for the six hundred bales of cotton in question as security for indebtedness due from Norvell, Camfield & Co. to defendant, and while so holding said receipts intrusted the same to one C. H. Camfield, a member of said firm of Norvell, Camfield & Co., for the purpose of consigning said cotton to plaintiffs, and procuring bill of lading therefor, and also certificate of insurance on said cotton which said bill of lading and certificate of insurance was to be attached to a draft drawn upon plaintiffs, and the proceeds of the collection or sale of said draft were to be applied to the extinguishment of the indebtedness of said Norvell, Camfield & Co., to defendant; and if you find that said Camfield in procuring said bill of lading caused to be stated therein a false and fraudulent statement of the weight of the said 600 bales of cotton, and did cause a false and fraudulent statement of the value of said cotton to be set forth in the certificate of insurance, and defendant, receiving said bill of lading and certificate of insurance from said Camfield, did cause the same to be attached to the sixty-day bill of exchange drawn upon plaintiffs, and did receive the proceeds therefrom and apply the same to the discharge of the indebtedness to itself from Norvell, Camfield & Co., and thus received benefit from said fraudulent representations of said Camfield while in possession of said notes; and if you further find that plaintiffs were induced to accept and did accept the said bill of exchange by reason of the false representations in said bill of lading and certificate of insurance, and sustained loss thereby, then the court instructs you that the defendant is responsible to plaintiffs in this action for the loss sustained by reason of said fraudulent representations so made by said Camfield in procuring the said bill of lading, and your verdict should be for plaintiffs.

The refusal of the court to give the following instruction requested by plaintiff in error: —

(Rec. p. 141.) *Fourth.* If the defendant, while holding in its possession warehouse receipts (known as cotton notes) for bales of cotton stored in the cotton warehouses of St. Louis, theretofore pledged to it byNorvell, Camfield & Co., as bales of ordinary weight, as shown by the evidence, received notice that a number of bales of said Norvell, Cam-

field & Company's cotton stored in said warehouses had been manipulated by rebaling, so that the weight thereof had been reduced to less than the ordinary weight of cotton bales, then it was the duty of defendant before permitting any of the said cotton bales of said firmto be shipped to plaintiffs on bill of lading, representing the bales shipped thereon to be of ordinary weight as collateral bills of exchange upon plaintiffs, sold for its, defendant's, benefit, to ascertain whether said cotton so shipped as of ordinary weight, for its, defeneant's benefit was of ordinary weight or not; and if it further appear that the cotton so shipped was represented in the bill of lading as of ordinary weight when in fact it was not of ordinary weight, and that plaintiffs suffered losses in consequence of such deficiency in weights by reason of accepting and paying the bill of exchange drawn against said shipment, then plaintiffs are entitled to recover from defendant the loss so sustained. And notice to the cashier of defendant was in law notice to defendant, and if the cashier received such notice it is immaterial whether he communicated the same to the other officers of the bank.

The refusal of the court to give the following instructions requested by plaintiff in error:—

(Rec. p. 141.) *Fifth:* If the jury believe from the evidence that Camfield, in order to mislead plaintiff and induce them to accept the bill of exchange for six thousand pounds caused to be placed in the bill of lading a false statement of the weight of said cotton, and if the cashier of defendant knew that part of the cotton of Norvell, Camfield & Company held by them in pledge and from which the cotton shipped was taken had been rebaled and the bales reduced in weight below the average weight of ordinary bales of cotton, then it was the duty of defendant to ascertain the true weight of the cotton shipped, and if it failed so to do and permitted Norvell, Camfield & Company to defraud plaintiffs by misleading them as to the true weight of said cotton and thereby to benefit defendant, then defendant cannot retain such benefit, to plaintiff's injury, but is liable to plaintiffs for any damage suffered by them by reason of the deficiency in weight of said cotton.

The refusal of the court to give the following instruction requested by plaintiffs in errors: —

(Rec. p. 142.) *Sixth.* The court instructs the jury that the knowledge sufficient to charge defendant with responsibility to plaintiffs in this action for the loss sustained by plaintiffs in consequence of the falsity of the statement of weight in the bill of lading does not require knowledge of all the details or the extent of the fraudulent manipulation if they find from the evidence that defendant, by its cashier, prior to the shipment, had knowledge of the fact of the manipulation and could have readily ascertained the details and extent if it had seen proper to do so.

The refusal of the court to give the following instruction requested by plaintiffs in error: —

(Rec. p. 142.) *Seventh:* —

The fact that a part of the proceeds of the sale of the bill of exchange drawn on plaintiffs, received by defendant, was applied to payment of a note of Norvell, Camfield & Company due the Merchants' National Bank, and that part of the cotton bales so shipped had been pledged to that bank, constitutes no defense to this action if it appear that the 600 bales were all shipped on one bill of lading and that such shipment was made for defendant's benefit and the proceeds thereof, after paying such note, applied to the payment of its claims against Norvell, Camfield & Co.

(Rec. p. 142.) *Eighth:* The refusal of the court to give the following instruction requested by plaintiffs in error: —

If the jury find for the plaintiffs they will assess their damages at the sum which they shall find from the evidence was the loss sustained by the plaintiffs in consequence of the actual weight of the cotton being less than the weight stated in the bill of lading which was attached to the bill of exchange accepted and paid by plaintiffs, not exceeding the sum claimed in petition with interest from date of filing suit, March 1st, 1883, at rate of six per cent per annum.

Ninth. The error of the court in that part of the charge to the jury included in words (Rec. p. 142): —

"But who is responsible therefor? There is no doubt where the ultimate responsibility rests. In this case it is to be determined whether there is an intermediate liability, to wit, the connection of the defendant with the fraud perpetrated. If the defendant knew of the fraud, to wit, the short weights, and with the intent to secure to itself payment of the indebtedness by Norvell, Camfield and Co., caused said bill of lading together with the bill of exchange connected therewith, the proceeds of which it was to receive, to be forwarded, then it, the defendant, is responsible for theloss incurred; otherwise not.

The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false on the shipment; and, if so, did it assent thereto with the intent to defraud the plaintiffs, as acceptors or drawees, of the bill? Whatever the cashier of the defendant bank did the defendant is liable for. Hence the inquiry may be directed to the ascertainment of his knowledge and intent, and also the knowledge and intent of any officer of the defendant.

Did the defendant, through its cashier or any other officer, know that there were false weights sent forward in the bill of lading, and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff? Is there any testimony of such fraudulent knowledge or intent upon part of the defendant. There is no testimony showing that there was any such fraudulent intent on the part of the defendant; therefore your verdict will be for the defendant.

Tenth. The error of the court in the following words of the charge to the jury (Rec. p. 142):—

"The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false in the shipment; and, if so, did it assent thereto with the intent to defraud plaintiffs as acceptors or drawees of the bill?"

Eleventh. The error of the court in the following words of the charge to the jury (Rec. p. 142): —

"Did the defendant through its cashier or any other officer, know that there was false weights sent forward in the bill of lading, and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff?"

Twelfth. The error of the court in the following words the charge to the jury (Rec. p. 142): —

"Is there any testimony of any such fraudulent knowledge or intent upon the part of defendant. There is no testimony showing that there was any such fraudulent intent on the part of the defendant; therefore, your verdict will be for defendant.

BRIEF.

Preliminary to statement of the legal propositions relied on by plaintiff, in error in support of their foregoing assignments of error, the

MATERIAL UNDISPUTED FACTS

disclosed by the record may be briefly summarized as follows: —

First. As stated by the court below in its charge; — the statement of weights in the bill of lading was false; the cotton had been manipulated as alleged and plaintiffs relying in good faith upon the correctness of such statement had accepted and paid bill of exchange drawn against them, and thereby sustained the loss claimed by them, to wit: $8,722.12.

Second. Of the 600 short weight bales so shipped to plaintiffs in error, nearly 400 had been for several months prior to the shipment, in possession of defendant as pledgees (by transfer and delivery of the warehouse receipts or cotton notes therefor), securing loan thereon, which loan at time of shipments to plaintiff in error was largely in excess of the *actual* value of the cotton (at its true weight), but less than the apparent value of said cotton estimated at the *false* weight, and the remaining bales included in the same shipment had been pledged to the Merchants' National Bank, and the proceeds of the entire shipment were collected by defendant, by its cashing sight draft drawn by the pledgors upon the New York bankers, who had theretofore contracted to purchase the sixty day bill of exchange

drawn on plaintiffs in error; the said sixty day bill of exchange and the bill of lading being attached to said sight draft; and said proceeds so collected by defendant were applied to the payment in full of claim of the Merchants' National Bank (said claim being less per bale than the amount collected per bale by defendant by sale of the exchange), then to the payment in full, of its own loan, upon the cotton shipped, and the surplus was paid to the pledgors.

Third. The false statement of weights was inserted in the bill of lading by one of the pledgors of the cotton to whom the cotton notes had been temporarily delivered by the defendant for purpose of exchanging for a bill of lading, the latter to be returned to defendant as a substituted security, and while such exchange for defendant's benefit under such temporary possession was so being effected. The bill of lading with such false statement of weights and the certificate of insurance with false valuation, also inserted by the pledgor, were returned to defendant in place of the cotton notes as a substituted security, and with the 60-day bill of exchange drawn on plaintiffs in error, attached to the sight draft drawn on the New York bankers, as per contract and cashed by defendant as above stated, defendant by payment of its claim in full, *in excess over the actual value of the cotton*, by reason of the false statement of weights, being thus the *direct beneficiary* of the fraud thus perpetrated.

Fourth. Some weeks before the shipment of the cotton, defendant by its cashier, received direct information of the rebaling, manipulation and consequent short weight of the cotton of the pledgors, and in consequence thereof, demanded and received additional margin upon its loan; and said cashier, also at the time was informed of the manipulation by the party who had done the manipulation, and who, he knew, could apprise him of the entire extent and details of the

shortage of weight; but said cashier did not ask for further information resting upon assurance of the pledgor (who had directed the manipulation, and thereafter inserted false statement of weights), that the bank was protected by the additional margin.

Upon these undisputed facts, which are as clearly established as by a special finding, the Circuit Court held;

First. That defendant was not liable unless it knew "through its cashier or other officer, that the bales were "false on the shipment," and "*assented thereto with intent* "*to defraud the plaintiffs.*"

And

Second: That there was *no testimony* showing such "fraudulent knowledge or intent on part of the defendant," and therefore directed a verdict for defendant.

The several assignments of error may be considered in connection with these two rulings of the court below; both of which, it is submitted, are erroneous, as plaintiffs in error contend, defendant being responsible in law for the fraud of Camfield, irrespective of its own knowledge of the fraud, and being also liable, on because it *did* have knowledge of the fraud sufficient in law to make it liable on *that* ground.

Considering these propositions in their order:—

I.

Camfield, the pledgor, to whom defendant, the pledgee delivered the documents of title (the cotton notes) for the temporary purpose of surrendering them in exchange for a bill of lading, such bill of lading to be returned as a "***substituted security***" received and held such securities and

prepared and returned such bill of lading in a fiduciary capacity, *i.e.* as *agent* of the defendant.

Story on Bailment, Sec., 299;
Jones on Pledges, Sec., 86;
Clark *v.* Iselin, 21 Wallace, 360;
Casey *v.* Cavaroc, 96 U. S. 476;
White *v.* Platt, 5 Denio, 269;
Hays *v.* Riddle, 1 Robt. N. Y. 248;
Norterbohn *v.* Maas, 3 Robt. N. Y. 253;
Macomber *v.* Parker, 14 Pick. 497;
Reeves *v.* Cupper, ~~11 C. B. 730~~;
Way *v.* Davidson, 12 Gray, 465;
Thayer *v.* Dwight, 104 Mass. 254;
Bruler *v.* Rose, 57 Iowa, 651;
Cooper *v.* Ray, 47 Ill. 53;
Hutton *v.* Arnett, 51 Ill. 202.

2. The false statement of weights being inserted by Camfield, while thus acting as *agent of defendant*, and effecting the exchange of securities on its behalf, defendant receiving and forwarding such false bill of lading, and collecting and retaining the proceeds of the fraud, thus obtaining *payment in full of its own claim, which could not have been paid, except by means of the fraud*, is in law responsible to plaintiffs in error for their loss sustained in consequence of such fraud.

Bigelow on Frauds, p. 362;
Hern *v.* Nichols, 1 Salkeld, 289, cited in Merch. Bank *v.* State Bank, 10 Wallace, 646;
Jeffery *v.* Bigelow, 13 Wend. 518;
Veazie *v.* Williams, 8 How. 134;
Locke *v.* Stearns, 1 Metc. 560;
Bennet *v.* Judson, 21 N. Y. 238;

Durst *v.* Burton, 47 N. Y. 167;
Craig *v.* Ward, 3 Keyes, 387;
Davis *v.* Bemis, 40 N. Y. 453;
White *v.* Sawyer, 16 Gray, 586;
Stockwell *v.* U. S. 13 Wall. 531;
Castle *v.* Bullard, 23 How. 172;
Story on Agency, 127.

The 1st, 2d, 3d, 7th, 8th, 9th, 10th, and 11th, assignments of error should therefore be sustained.

As the facts on which this liability of defendant for the fraud rests, and the amount of plaintisff' damages are undisputed, and are as clearly established as if a special finding had been entered, a *venire de novo* is not required, but under section 701, Rev. Stat., the judgment of the Circuit Court should be reversed and judgment directed to be entered in favor of plaintiffs in error.

Natl. Bank *v.* Insurance Co., 95 U. S. 673;
Fairfield *v.* County of Gallatin, 100 U. S. 47;
People's Bank *v.* National Bank, 101 U. S. 181;
Warwick *v.* Davis, 104 U. S. 775.

II.

But even assuming that it devolved upon plaintiffs in error to show knowledge of the fraud on part of defendant, the court erred in holding that there was no testimony showing such knowledge; as there was not only on this theory, evidence sufficient to take the case to the jury, but it was *undisputed* that defendant by its cashier had received notice of the shortage of weight in its cotton before the shipment,and by his own admission, failed or refused to learn the extent and details of the fraud, though conscious of having the means of such knowledge before him,

only because he saw fit to rely upon the assurance of the chief actor in the fraud, that the defendant was secured by the margins, — and on this view alone, verdict for plaintiff should have been directed.

Bigelow on Fraud, pp. 288–9;
Wade on Notice, Secs. 5–13;
Singer *v.* Jacob, 11 Fed. Rep. 559;
Mackay *v.* Commercial Bank of New Brunswick, 5 Privy Council, 294;
Goodman *v.* Simonds, 20 How. 343;
Lodge *v.* Simonton, 2 P. & W. 439; 23 Am. Dec. note.

One who is conscious of having the means of knowledge, in law is chargeable with actual knowledge.

Speck *v.* Riggin, 40 Mo. 405;
Sensenderfer *v.* Kent, 8s Mo. 583, and *supra*.

Assignments of error 4th, 5th, 6th and all the assignments excepting specifically to the charge of the court, should therefore be sustained.

Not only was there palpable error in directing a verdict for the defendant, but on the undisputed facts verdict should be directed for the plaintiffs in error on the ground of "actual acknowledge" alone — irrespective of the first point — a *venire de novo* not being required.

III.

Defendant being liable on each of the foregoing grounds, the action is properly brought as action on the case for deceit, and the *scienter* of the agent is properly set out as that of the principal.

Bennett *v.* Judson, 21 N. Y. 238;
Mackay *v.* Commercial Bank S. N. B., 5 Privy Coun. 294.

ARGUMENT.

LAW OF NEGOTIABLE PAPER NOT INVOLVED.

It is obvious that the case at bar differs radically from the class of cases represented by Hoffman *v.* Bank of Milwaukee, 12 Wallace, 181, and Goetz *v.* Bank of Kansas City, 119 U. S. 551, involving rights of holders of negotiable paper. In the former of the above cases the consignee, who had accepted and paid draft to which was attached a fraudulent bill of lading, sought to recover back the amount from the bank which had discounted the paper in the ordinary course of business without notice of the fraud, and in the latter the consignee and drawee, who had accepted paper drawn against the consignment upon a fraudulent bill of lading, sought to defend the recovery by the bank which had discounted the paper in the usual course of business without notice, and in each case it was held that the bank discounting the drafts stood toward the acceptors in the position of an original lender, and its rights were to be determined by the accepted rules governing such relation under the law of negotiable paper.

In the case at bar, however, no such question is presented. The defendant was not a party to the bill of exchange, which was accepted and paid by plaintiffs in error in reliance upon the statements of the bill of lading attached thereto, the drafts upon plaintiffs in error having been purchased by Knoblauch & Lichtenstein, the New York bankers, and under their contract to purchase defendant cashed a sight draft upon them for the proceeds of the exchange, defendant thus realizing the proceeds of the draft drawn upon plaintiffs in error without becoming itself a party to such draft, retaining, however, its lien upon the

cotton shipped until the sight draft upon Knoblauch & Lichtenstein was paid.

Defendant therefore is sued, not as a party to negotiable paper, but as the *bailee and special owner of the property shipped*, and a *party to the fraudulent shipment*, and the *beneficiary of the fraud*, and this liability is established upon the conceded facts upon each of two distinct grounds, first, on its responsibility in law for the fraud of Camfield, of which it received the benefit, under the settled law of agency, whether it had actual knowledge or not, and, second, because it did have such actual knowledge.

I.

Camfield, the pledgor, to whom defendant, the pledgee, delivered the documents of title, *i.e.*, cotton notes, for the temporary purpose of surrendering them in exchange for a bill of lading, such bill of lading to be returned and held as *substituted security*, received and held such securities and prepared and returned such bill of lading in a fiduciary capacity, *i.e.*, as *agent* of the defendant.

There is no dispute as to the facts on this point. The cotton had been pledged to the defendant by the transfer and delivery of the warehouse receipts called cotton notes, which were payable to bearer. When the shipment was made to plaintiffs in error, defendant gave Camfield the cotton notes (Record, pages 107–135) for the purpose of obtaining a bill of lading in the usual manner, the cotton notes being delivered at the transportation office in exchange for the bill of lading, which contained, as Camfield knew, and by his procurement, a false statement of weight (Record, page 58). The Merchants' National Bank, which had held a portion of the cotton notes (whether 207 or 209 does not clearly appear), sent their own messenger to

accompany Camfield to the transportation office, but defendant permitted him to go alone. The bill of lading reciting the false weight was returned to the defendant by Camfield and attached to the sixty-day bill drawn on plaintiffs in error, and with it was attached to the sight draft drawn on Knoblauch & Lichtenstein for the proceeds of the exchange as per their contract made with Norvell (Record, page 138).

That the temporary possession of Camfield for this purpose of exchange was in law a *possession for the defendant* is clearly established.

Says Story on Bailments, section 229: —

"As possession is necessary to complete the title by pledge, so by the common law the positive loss or the delivery back of the possession of the thing with the consent of the pledgee terminates his title. However, if the thing is delivered back to the owner for a temporary purpose only, and it is agreed to be re-delivered by him, the pledgee may recover it against the owner if he refuse to restore it after the purpose is fulfilled. * * * So if it is delivered back to the owner in a new character, as for example as a special bailee or *agent*, in such a case the pledgee will still be entitled to the pledge, not only as against the owner, but also as against third persons, for under such circumstances the possession is perfectly consistent with the existence of the original right of the pledgee."

See also Jones on Pledges, Section 86.

In the case of Clark *v.* Iselin, 21 Wallace, 360, this court held where collateral securities were delivered back to the borrower for the purpose of facilitating collections, that the title of the pledgees to the notes was not affected.

It is needless to quote at length from the cases supporting this doctrine as they are elaborately reviewed and approved by this court in the case of Casey *v.* Caveroc, 96 U. S. 467, wherein it was held that possession is of the essence of a pledge both under the civil and common law,

and that in the case from Louisiana before the court there was no such delivery and possession as was necessary to create a privilege by the law of Louisiana. But the court says, page 480:—

"All the cases cited, however, show that a bailment to "the pledgor for a mere *temporary purpose* for the use of "the pledgee, or for the repair and conservation of the "pledge, will not destroy the latter's possession, at the "same time they imply that a re-delivery to the pledgor, "except for the special and temporary purpose indicated, "divests the possession of the pledgee and destroys the "pledge."

In the case at bar there can be no question that the re-delivery to the pledgor was merely temporary, and that had the cotton been levied on by an attaching creditor of Norvell, Camfield & Co., while this exchange was being effected the defendant bank could undoubtedly have successfully asserted its title under the doctrine of White *v.* Iselin, and Casey *v.* Caveroc.

Hayes *v.* Riddle, 1st ~~Robertson,~~ New York, 248, is analogous. There the pledgee of a railroad mortgage bond had delivered it to the pledgor for the purpose of getting it exchanged into railroad stock, the stock to be brought back as a *substituted security*. It was held that the pledgee could maintain trover for the bond. The court, citing McComber *v.* Parker, 14th Pickering, 497, and Story on Bailments, *supra*, says:—

"If the defendant, the pledgor, received back the bond "in any capacity it was in that of a *special bailee* or *agent* "*of the plaintiff* to exchange it for stock." So in the case at bar Camfield received the cotton notes as the special bailee or agent of the defendant bank to exchange them for a bill of lading.

The cases of Reeves *v.* Cupper, 5 Bing. N. C. 136; McComber *v.* Parker, *supra*, and White *v.* Platt, 5 Denio,

269, are all cited approvingly upon this point in Casey *v.* Caveroc, *supra*.

In Way *v.* Davidson, 12 Gray, 465, the pledgee of a promissory note who delivered it back to the pledgor under agreement to return it or another note was held entitled to maintain action against pledgor for conversion of the note, and in Bruler *v.* Rose, 57 Iowa, 651, it was held that a pledgor taking possession of a pledge from the pledgee with deceit and false pretense and felonious intent would be guilty of *larceny*. To same effect are Martin *v.* Reed, 11 Common Bench Report, 730; Cooper *v.* Ray, 47 Illinois, 53; Hutton *v.* Arnot, 51 Illinois, 202.

In Thayer *v.* Dwight, 104 Mass. 254, the pledgee employed the pledgor as agent to make the sale, allowing him to contract for it in his own name and delivering the goods on his order to the purchaser and the court held that he did not lose his lien, saying: —

"We do not understand that a pledgee loses his lien by "permitting the pledgor to have control of the property for "a special and limited purpose consistent with the enforce- "ment of his lien and not for his own use merely. "Walker *v.* Staples, 5th Allen, 84. The general owner "may be the depositary of his own pledgee Story on "Bailment, Sections 58–230. The *formal possession* of the "depositary or *agent* is the *legal possession* of the depositor "or principal."

THE INTEREST OF THE PLEDGORS IN THE COTTON ONLY NOMINAL.

It may be added in this connection that the interest of the pledgors in the cotton at the time of the shipment, in view of the actual value of the cotton, was only *nominal*. The original loan of the defendant (Rec. p. 115), was at rate of $45 per bale; deducting the margin payment of $4 per bale made in May, and adding the accumulation of interest and storage, the interest of the defendant bank at

time of the shipment was over $41 per bale, while the *actual value* of the cotton on its actual weight was far below that, not exceeding $33 or $34 per bale. Defendant was therefore the *real and only owner* of the cotton, and had been for several months prior to the shipment.

The defendant on the trial offered the testimony of two bank cashiers, Messrs. Nickerson and Hutchinson (Rec. 85 to 92), for the purpose of showing the custom of St. Louis bankers in handling cotton notes. Mr. Nickerson testified as follows on the point now under consideration (Rec. p. 87):—

"Q. Now when you speak of the manner in which cot-
"ton is shipped you say you entrust the possession of the
"cotton notes to the pledger of the cotton notes? A. Yes,
"sir.

"Q. That is your custom? A. Yes, sir.

"Q. What does he give you when he takes the cotton notes? A. A memorandum receipt just simply stating that he has so many cotton notes.

"Q. Received for the purpose of exchanging them for a bill of lading? A. It is not so stated.

"Q. That is the understanding between you, it is not? A. Yes, sir.

"Q. You do not propose in such a transaction to surrender you control of the cotton notes, do you? A. In no way."

The understanding of the witness of course does not change the law, but it is obvious that his understanding is in accordance with the law on that point. Not to prolong the discussion on this branch of the case, it is clear that the possession by Mr. Camfield of the cotton notes for the purpose of obtaining a bill of lading and returning the latter as a substituted security, was, so far as the relations of Camfield and bank are concerned, precisely the same as if the notes had been delivered to one of his own clerks for the purpose of obtaining such bill of lading. But this right, thus secured to the defendant bank by the law in its posi-

tion as pledgee, has its attendant obligation and responsibility, and it cannot take the benefit of the acts of its agent in that behalf without an attendant liability under the recognized rules of law. It enjoys the right *cum onere*.

2. The false statement of weights being inserted by Camfield while thus acting as agent of defendant and effecting the exchange of securities on its behalf, defendant, receiving and forwarding such false bill of lading and collecting and retaining the proceeds of the fraud, thus obtaining payment in full of its own claim which could not have been paid except by means of this fraud, is in law responsible to plaintiffs in error for their loss sustained in consequence of such fraud.

On this point also the facts are undisputed. Camfield, while thus in possession of the cotton notes, inserted in the bill of lading instead of the *true* weight of the cotton, 206,043 pounds, a *false* statement of weight, to wit, 276,-815 pounds, and in furtherance of the same fraudulent purpose inserted in the certificate of insurance a grossly false statement of value of the cotton to wit, $33,845, when its real value was but little in excess of $20,000. The insertion of the weight in the bill of lading was *necessary* for the purpose of shipment, and was necessarily a part of the duty contemplated to be discharged by him when he was entrusted by the bank with the possession of the cotton notes for the purpose of preparing the papers for shipment. The bill of lading was returned to the bank with the certificate of insurance and other papers, and attached to the bill of exchange drawn on plaintiffs in error. Defendant having *been shown the contract* of *Knoblauch & Lichtenstein to purchase the exchange* (Record, page 134), cashed the sight draft drawn by K. & L. for the agreed amount less exchange. The amount actually placed by the bank to the credit of Norvell, Camfield & Co. (Record,

page 47), was $28,973.74, or at the rate of $48.28 per bale, the amount loaned by the bank upon the cotton being at this time in excess of $41 per bale, and the actual value of the cotton at this time not exceeding $35 or $36 per bale. From the proceeds thus realized from what was practically a sale of the cotton by the bank to plaintiffs in error, the bank paid $9,483.60 to the Merchants' National Bank which had held under pledge some 209 bales of the 600 included in the shipment. It will be seen, however, that the amount thus paid to the Merchants' Bank was $45.38 per bale, assuming 209 to have been the number of bales, while the prices actually realized by the defendant from the sale of the cotton was $48.28, leaving a very comfortable profit on this part of the transaction.

DEFENDANT THE BENEFICIARY OF THE FRAUD.

The result was that, after the claim of the Merchants' National Bank was paid, the proceeds paid in full, defendant's advance upon the cotton, which, as has been already seen was far in excess of its real value, a surplus was left for Norvell, Camfield & Co., amounting to several thousand dollars when on the real value of the cotton, they had at the time of the shipment no interest in it whatever.

Thus the sale of the cotton realized (net proceeds of ex-change)		$28,973 74
Paid Merchants' Bank	$9,483 60	
Paid defendant's loan, (*Rec. p.* 47)	16,124 76	
		$25,608 36
Surplus to Norvell, Camfield & Co		$3,365 38

It will be seen that defendant's advance upon its 393 bales was almost exactly $41 per bale. The real value of this cotton, as ascertained upon its arrival in Glasgow a month later, *although cotton in the meantime had advanced* (Rec.

p. 63), (making no deduction on account of that advance), was about **$33.85** per bale (Rec. p. 14). We have then, approximately,

Actual value of cotton per bale at shipment.....	$ 33 85
Amount loaned by defendant per bale.....	41 00
Amount realized by defendant from net proceeds of draft.....	48 28
Amount per bale realized by defendant in excess of actual value of cotton.....	14 43
Amount per bale applied by *defendant* in payment of its own advance, *in excess of actual value of cotton*.....	**7 15**

The amount paid by plaintiff in error in excess of actual value of the cotton, being the amount of loss sustained by them in consequence of the fraud was (Rec. p. 14) $8,-722.15. This, the direct proceeds of the fraud, was distributed about as follows; assuming average value of cotton to be ascertained in Glasgow, on arrival.

To the Merchants' Bank (excess of amount paid over value of cotton held by that bank)..	$2,386 00
To defendant (excess of loan paid over value of cotton).....	**2,821 71**
Surplus to Norvell, Camfield & Co.....	3,365 38
	$8,573 09

The difference in exchange accounts for the slight discrepancy in the total, as compared with actual loss proven by plaintiffs in error.

Defendant's account may be stated as follows: —

Total amount advances on 393 bales shipped....	$16,124 76
Actual value of cotton shipped at $33.85.....	13,303 05
Amount actually retained by defendant from fraudulent proceeds of this shipment.....	**$2,821 71**

This portion of the surplus, from this shipment, the direct proceeds of the fraud, is now held by defendant, who is thus the *direct beneficiary of the fraud.*

ALL DEFENDANTS' COTTON SHIPPED.

A similar shipment was made a few days later to S. & E. Smith, of Liverpool, resulting as the record shows in a similar manner, and before the end of August, all of the 1,474 bales which the bank held in pledge, was shipped, and the *entire indebtedness* of Norvell, Camfield & Co., to the defendant (originally $64,500) *was paid in full, principal and interest*, and a surplus of several thousand dollars left for the pledgors, who, as has been seen, had no real interest whatever in the cotton at the time of the shipment in question.

As the value of the 1474 cotton bales thus sold and shipped for defendant's benefit was less than $50,000.00 (based upon the returns of the "pickery," Rec. p. 35) the extent of defendant's profit from the fraud, in its entirety, can be appreciated.

DEFENDANT, THE BENEFICIARY OF THE FRAUD, IS RESPONSIBLE IN LAW FOR THE FRAUD OF CAMFIELD.

It is unnecessary, for the purposes of this case, to consider to what extent a principal is liable for the fraudulent acts of his agent where he has not *impliedly adopted* the fraudulent act by *receiving and retaining the proceeds* of the fraud. The authorities all concur that where the principal does receive benefit from the fraud, he, in contemplation of law, adopts the fraud and is *civiliter* responsible therefor. Thus Mr. Bigelow, who is disposed to limit the rule or to restrict the liability of principal for the fraudu-

lent act of his agent more than the current weight of authority concedes, says (Bigelow on Frauds, p. 382): —

"The principal will be held implicated in the fraudulent "conduct of his agent if he insists upon taking benefit of "the fraud." * * * "The innocence of a party who "has profited by fraud will not entitle him to retain the "fruits of another's misconduct, or exempt him from the "duty of restitution."

In the case of Hern *v.* Nichols, 1st Salk. 289, in action of deceit it appeared there was no actual deceit in the defendant who was the merchant, but that it was his factor beyond sea, and the doubt was if this deceit could charge the merchant, and Holt, C. J., was of opinion that the merchant was answerable for the deceit of his factor though not *criminaliter* but *civiliter*, "for seeing somebody must "be a loser by this deceit it is more reasonable that he "who employs and who puts a trust and confidence in the "deceiver should be a loser than a stranger," and upon this opinion the plaintiff had a verdict. Hern *v.* Nichols was cited approvingly in Merchants' Bank *v.* State Bank, 10 Wallace, 646. In case of Jeffrey *v.* Bigelow, 13th Wendell, 518, it was held that one partner is liable for the deceit or other fraudulent act of his copartner.

In Bennett *v.* Judson, 21st New York, 238, action of deceit for alleged false and fraudulent representations in sale of western lands, the court says: —

"There is no evidence that the defendant authorized or "knew of the alleged fraud committed by his agent in "negotiating the exchange of lands, nevertheless he cannot "enjoy the fruits of the bargain without adopting all the "instrumentalities employed by the agent in bringing it to "a consummation, as long as he retains the benefit of the "dealings he cannot claim impunity on the ground that the "fraud was committed by his agent and not by himself. "This is elementary doctrine and disposes of one of the "questions raised at the trial."

It was also held that the complaint properly set out the representations as those of the principal. The doctrine of Bennett *v.* Judson was reaffirmed in Davis *v.* Bemis, 40 New York, 453. Again in Durst *v.* Burton, 47 N. Y. 167, the doctrine was applied to a case where defendants owned a cheese factory and the fraud was committed by the lessee operating the same; the Court says: "Besides the defend-"ants received the benefit of the fraud committed by those "ostensibly in their employ; the reason and policy upon "which the liability of the principal for the fraud and mis-"conduct of the agent apply with full force to charge the de-"fendant in this case." See also Craig *v.* Ward, 3d Keyes, 387; the Court saying, Hunt, J.: "I concur fully in the "proposition laid down in Bennett *v.* Judson that having "received the fruit of the bargain defendant was liable for "the frauds of his agent although he did not authorize the "statement."

In Locke *v.* Stern et al., 1st Metcalfe, 560, action was trespass upon the case in nature of deceit for sale of mixture of linseed meal and inferior meal as linseed meal, mixture having been made by foreman of defendant under direction of one of defendants. The Court held that as the deceit was done for the defendants' benefit by their agent acting under their orders, in the conduct of their general business, they were responsible and that a principal in general is civilly liable for the neglect, deceit or other wrongful act of his agent in the course of his employment, though in fact the principal did not authorize the practice of such act, provided the act is committed in the course of the agent's employment.

In White *v.* Sawyer, 16th Gray, 586, it was held that two owners of a vessel are jointly liable in an action of deceit for fraudulent representations made by one of them acting for both in a sale of the vessel, although one had no knowledge of the fraudulent representations, and the *damages are not limited to the profit derived by them*, or *either of them* in the fraud, and that it was immaterial that *one of the*

defendants acted both for himself and for the other as the agent of that other, saying: —

"We have the case of two principals sued for false rep-
"resentations made in a sale of property, one acting for
"himself, and the other acting by an agent. If the agent
"employed by one had been a third person there seems to
"be no doubt that the two principals could be jointly sued.
"*What difference can it make that one of the principals*
"*acted as the agent of the other?* He is joined in the suit,
"not as agent, but as another principal."

In the case at bar it is contended that defendant is not liable for the fraud committed by Camfield because Camfield had a nominal interest in the cotton. Under the doctrine of the above case, even if he had been a part owner of the cotton, the responsibility of the principal would be none the less because the agent has himself an interest in the subject-matter, and that is clearly the law. It has been enforced again and again in cases of partnership.

But it is needless to look beyond the decision of this court in Vesey *v.* Williams, 8th Howard, 527, where an auctioneer pretended to have received bids and thus ran up the price of the property sold, the vendor having no knowledge of the fraud, the court decreed that the vendor should repay to the vendee the excess over the highest real bid, the court saying that a principal profiting by the acts of the agent is answerable *civiliter* for such acts, however innocent himself of any intent to defraud. And in Cassel *v.* Bullard, 23d Howard, 172, where a partnership was in possession of goods as commission merchants, it was held that fraudulent representations by one or more of the firm to induce plaintiff to sell the goods to an insolvent purchaser rendered the firm liable for the fraud, the court saying: —

"It was conceded and well said by the Court in Olmsted
"*v.* Holling, 1st Hill, 318, that it does not lie with one to
"claim property through the fraudulent act of another
"whether partner or agent without being affected by that act

"the same as if it were his own, and we think the same "principle must apply in a case like the present when a firm "doing business as commission merchants have received the "fruits of the fraud in the commissions earned for trans- "acting the business."

Where one assuming to be an agent had committed a fraud in a sale it was held in Taylor *v.* Green, 8th Car. and P. 316, that "the mere adoption of the sale and the receipt "of the money by the person for whom the sale was made "rendered him liable for the fraud." In the very strong case of Stockwell *v.* The United States, 13th Wallace, 531, it was held by this court that in a civil action by the United States against two members of a firm to recover penalties under the act of March 3rd, 1823, for purchasing goods with *knowledge* of their illegal importation, that it was not error in the court to instruct the jury that the knowledge of another member of the firm was to be deemed the knowledge of the defendants, the court saying: —

"That as a general rule partners are all liable to make indemnity for the tort of one of their number committed by them in the course of their partnership business, is familiar doctrine. It rests upon the theory that the contract of partnership constitutes all its members agents for each other, and that when a loss must fall upon one of two innocent persons, he must bear it who has been the occasion of the loss or has enabled a third person to cause it. In other words the tortious act of the agent is the act of his principals if done in the course of his agency, though not directly authorized, and this is emphatically true when the principals, as in this case, have received and appropriated the benefit of the act. * * * They have therefore now the proceeds of the sale of property which was not their own, but which had been forfeited to the United States, and they have secured and have now held these proceeds though the tortious act of their own partner who planned and effected the fraudulent importation for their benefit and his. Can it be that they may derive a profit from his fraud and yet repudiate his act by asserting that his knowledge of the fraud does not affect them?

Says Story on Agency, Section 127:

"The maxim of natural justice here applies with its full force that he who without intentional fraud has enabled any person to do an act which must be injurious to himself, or to another innocent party, shall himself suffer the injury rather than the innocent party who has placed confidence in him."

It is said further in the same work that the same principle was applied with rigorous exactness in the Roman law for the same reason as in the common law, to prevent deception upon the innocent and unwary, and also to further and sustain the public policy of inviting confidence in all matters of navigation, trade and business.

The law and the facts therefore are equally clear. Defendant is responsible for the fraud committed by its agent while in the performance of its business in the course of his employment and for its own benefit as well as his. It certainly will not be allowed while retaining and enjoying the proceeds of the fraud to deny responsibility.

There is nothing in the contention that because Camfield was the pledger of the cotton that therefore defendant is not responsible for the fraud so committed by him. He was none the less the agent of the defendant because he had an interest of his own just as a partner is none the less the agent of his copartners, and none the less binds them by his torts because he acts for himself as well as for them. Clearly the same principle applies in this case.

It follows that the Court below erred in refusing to charge the jury as per the first request of plaintiffs in error (Record, page 140), which directs the jury to find for plaintiffs with interest from date of filing suit, March 1st, 1882. (See also second and third requests, Rec. p. 140.) There is no uncertainty as to the amount of damage. It is undisputed that the damage of plaintiffs in error is as set forth in the testimony of them both (Record, page 14) the sum of $8,722.15. It is therefore submitted that irrespective of any question of any actual knowledge on the part of the

defendant of this fraud the judgment should be reversed and judgment directed to be entered for the sum of $8,722.15 in favor of plaintiffs in error, with interest from date of filing suit.

II.

THE KNOWLEDGE OF DEFENDANT.

The defendant had actual knowledge of the shortage of weight before the shipment and therefore was liable on that ground, and the Court erred in directing verdict for defendant.

The Court below not only held that the defendant was not responsible for Camfield's fraud unless it had actual knowledge itself of the fraud, but it further charged that there was no evidence of such knowledge and directed a verdict for defendant. The position of the Court is also illustrated by instructions 4, 5 and 6 requested on behalf of plaintiffs set forth in the fourth, fifth and sixth assignments of error (Record, pages 141, 142), all of which it refused. These instructions are as follows: —

"4th. If the defendant while holding in its possession warehouse receipts known as cotton notes for bales of cotton stored in the cotton warehouses of St. Louis theretofore pledged to it by Norvell, Camfield & Co. as bales of ordinary weight, as shown by the evidence, received notice that a number of bales of said Norvell, Camfield & Co.'s cotton stored in said warehouses, had been manipulated by rebaling so that the weight thereof had been reduced to less than the ordinary weight of cotton bales, then it was the duty of defendant before permitting any of the said cotton bales of said firm to be shipped to plaintiffs on bill of lading representing the bales shipped thereon to be of ordinary weight as collateral to bill of exchange sold for its, defendant's, benefit, to ascertain whether said cotton so shipped as of ordinary weight for its, defendant's, benefit was of ordinary weight or not, and if it further appeared

that the cotton so shipped was represented in the bill of lading as of ordinary weight, when in fact it was not of ordinary weight, and that plaintiffs suffered loss in consequence of such deficiency in weights by reason of accepting and paying the bills of exchange drawn against said shipment, then plaintiffs are entitled to recover from defendant the loss so sustained, and notice to the cashier of defendant was in law notice to defendant, and if the cashier received such notice it is immaterial whether he communicated the same to the other officers of the bank."

"And — 5th. If the jury believe from the evidence that Camfield, in order to mislead plaintiffs and induce them to accept the bill of exchange for 6,000 pounds, caused to be placed in the bill of lading a false statement of the weight of said cotton, and if the cashier of defendant *knew* that part of the cotton of Norvell, Camfield & Co., held by them in pledge, and from which the cotton shipped was taken, had been rebaled and the bales reduced in weight below the average weight of ordinary bales of cotton, then it was the *duty of defendant* to ascertain the *true weight of the cotton shipped*, and if it failed so to do and permitted Norvell, Camfield & Co. to defraud plaintiffs by misleading them as to the true weight of said cotton, and *thereby to benefit defendant*, then defendant cannot retain such benefit to plaintiffs' injury, but is liable to plaintiffs for any damage suffered by them by reason of the deficiency in weight of said cotton."

"6th. The court instructs the jury that a knowledge "sufficient to charge defendant with responsibility to "plaintiffs in this action for the loss sustained by plaintiffs "in consequence of the falsity of statement of the weight "in the bill of lading does *not require knowledge of all the* "*details or the extent of the fraudulent manipulations* if "they find from the evidence that defendant, by its cashier, "prior to the shipment *had knowledge of the fact of the* "*manipulation and could have readily ascertained the de-* "*tails and extent if it had seen proper to do so.*"

The action of the court in directing a verdict for defendant, rendered it unnecessary to consider the foregoing requests in detail, — although it is submitted that all of the requests were proper, and should have been granted, and that it was error to refuse them.

As it has been already seen the court overruled a demurrer to the evidence at the close of plaintiffs' case, but at the close of all the testimony directed a verdict for defendant, thus apparently holding that plaintiffs' *prima facie* case was rebutted by defendant's testimony.

That it is error to withdraw from from a jury the determination of disputed facts in a case, and that a case should never be withdrawn from the jury unless the testimony be of such a conclusive character as to compel the court in the exercise of sound judicial discretion to set aside a verdict returned in opposition to it, has been repeatedly determined by the decisions of this court.

Manchester *v.* Ericsson, 105 U. S. 347;
Phœnix Insurance Co. *v.* Duster, 106 U. S. 32;
Ins. Co. *v.* Luthrop, 111 U. S. 612.

The correctness of the court's rulings on this branch of the case can only be determined by a review and analysis of the testimony bearing upon this question of knowledge. It appears that the date of the rebaling by Hudson whereby 1085 bales were made into 1599 bales in March and April, 1882, was closely followed by the dates of the several demand loans made by defendant whereby it loaned $64,450 upon 1462 bales of cotton. As it is admitted that these loans were made upon the cotton bales as of full or average weight, it is obvious that a fraud was perpetrated upon the defendant by the pledgors.

It is admitted by all the witnesses that it is the unvarying custom of bankers in making loans to assume that cotton is of full or average weight unless otherwise stated.

Defendant, having thus this large sum loaned upon the cotton as of full weight, received express notice of the shortage of weight as follows: —

1st. **Goldman notifies defendant of the shortage.**

There is no controversy as to this notice. (Rec. p. 65.)

Mr. Goldman, a cotton merchant, a director in one of the cotton warehouses, and customer of the defendant in the latter part of May, learned from a private source that there was something wrong in the cotton of Norvell, Camfield & Co., that they had short weight cotton stored in the warehouses which had been picked, and as a friend of Biebinger, the cashier of defendant, he went at once to him and informed him of what he had heard, knowing that the defendant was carrying cotton for Norvell, Camfield & Co. Mr. Biebinger's own statement of the interview is follows (Rec. p. 105):—

"Well, Mr. Goldman came up and told me that he had "heard a rumor that Norvell, Camfield & Co. were carry- "ing some light weight cotton, that they had sent "some cottons to the pickery to have them over- "hauled, stained bales that had been stained and damaged "cotton, and that in *consequence thereof there was some* "*short weight cotton*, and that the rumor had reached him "and he thought as he was a friend of ours that it was *his* "*duty* to let us know; he *didn't put any great stress* on it, "it seems he *didn't think it amounted to much*."

(It is important to note here, as elsewhere in the testimony, the contrast between Mr. Biebinger's *present* recollection as to what was *thought* at the time and the undisputed testimony as to what was done.)

2nd. **The Goldman weighing.**

Mr. Biebinger, continuing, says (Record, page 105):

"Nevertheless, I asked him to have some of these cot- "tons weighed for me, and he went to work and had a lot "weighed, I think it was 15 or 16 bales, and he brought "me up the memorandum."

On this point Mr. Goldman says:—

"That at the request of Mr. Biebinger, the cashier, he

had the superintendent of the St. Louis Cotton Compress Company weigh some 15 or 16 bales and he reported his weights to Mr. Biebinger, and that the average of the weight was between 390 and 400. Mr. Goldman further says that Mr. Biebinger examined these weights in his presence, took down some of the collateral notes, but couldn't tell whether he took all of them or not, and said he had only a few of them. Mr. Biebinger says in his direct examination (Record, page 105) that he found but four or five, and in cross-examination (Record, page 119) puts the number at five or six. The cross-examination of Mr. Biebinger, at this point is interesting.

(Rec. p. 119.) "Q. How long did it take you (to go over the cotton notes)? A. It might have taken me and one of our young men as much as two hours or an hour and a half.

"Q. Who was the young man that went over them with you? A. I don't remember now.

"Q. About what date was it that you saw this list of weights sent by Mr. Goldman? A. I do not know whether he sent it up or brought it himself, nor can I remember the time.

"Q. How did those weights average? A. The 16 bales, I think, averaged in the neighborhood of 400 pounds. I think a little over 400 pounds, but whether a little more or a little less, I cannot remember; *I did not pay very much attention to it then.*

"Q. Did you preserve the paper showing these weights? A. I did not.

"Q. What did you do with it? A. I returned it to Mr. Goldman with a remark that there were only five or six bales that we could trace as our cotton.

"Q. Did you return it that same day? A. I do not think so, I think it was next day.

"Q. What did you do next about this matter? A. *I called on Novell, Camfield & Co., for additional margin.*

"Q. For how much additional margin? A. $4 a bale."

3d. Defendant demands and receives margin on account of the shortage "rumors."

Camfield having absconded upon the discovery of the fraud in Glasgow, the only testimony upon this demand and payment of a margin is that of Mr. Biebinger, defendant's cashier. The occasion of this demand for margin is thus described on direct and cross-examination: —

DIRECT EX., Rec. p. 105.

"Nevertheless, I came in, thinking over the matter, I came to the conclusion that it was my duty to call for additional margin under the circumstances, and *another reason* inducing me to do that was this, *storage* on the cotton had accrued on some of the cottons for several months, four to five months, and I thought if there was anything in that weight it would be best for me to have additional margins, so on the 26th of May, I believe it was, I notified the firm of Norvell, Camfield & Co. to put up an additional margin of $4 a bale, and to pay the accrued interest on the various notes up to that time. The interest then amounted to between $700 and $800."

CROSS-EX., Rec. p. 123.

"Q. Would you ever have thought of calling for more margin if you had not heard that report that came to you from Mr. Goldman? A. I admitted and told you so that I called for additional margin because Mr. Goldman had informed me that the rumor was that there was some short or light weight cotton. *The storage had really nothing to do with it*, it entered into the calculation as a matter of course."

As the defendant at this time held 1462 bales of cotton the amount of margin called for was $5,846, being about nine per cent additional on their loan, the usual margin as testified by Mr. Biebinger being ten per cent, thus nearly doubling the usual margin. As the accrued interest amounted to $733 (Record, page 120), the total payment called for was $5,759. Camfield finally succeeded in paying this margin, the last payment being made on June th 2d (Record, page 122), a week after the call was made, and $950 of the amount was raised by an additional loan by the bank of that sum on a new demand note secured by ten bales of cotton and the membership certificates of Camfield in the Merchants' and Cotton Exchanges of St. Louis. It

will be remembered that when Norvell had left for Europe on the 26th of April he had borrowed of the bank on his personal account $600 secured by his own memberships in the Merchants' and Cotton Exchanges. Mr. Biebinger's opinion of this kind of security for bankers' loans is indicated by the following from his cross-examination (Rec. p. 117):—

"Q. Are you in the habit of loaning money to merchants in good standing upon their memberships in the Merchants' and Cotton Exchanges? A. Yes, sir; we do it sometimes for *poor fellows who haven't got anything else for the moment to offer.*

"Q. So that in this case you did not depart from your custom of loaning to a poor fellow that did not have anything else to offer? A. We do that sometimes."

4th. Camfield's explanation to Biebinger.

Mr. Biebinger testifies that when the call was made for margin, Camfield called at the bank to know the reason. As already stated, we have only the testimony of Mr. Biebinger as to the conversation between them. He says that Camfield pronounced the rumor a lie, that it was true that among the large number of bales of cotton there were some bales that were called rejected bales that had to be removed to the pickery and the stained portions taken out and the grades separated, and the cotton rebaled and returned to the warehouses; but that he, Camfield, assured him "upon his word of honor as a gentleman" that there was no truth in the *rumor of three bales being made out of two* (Record, page 106).

On cross-examination his testimony as to the same explanation is as follows (Record, pages 122–123): —

"Q. What did you tell Mr. Camfield when he asked you why you called for the margin? A. I simply told him in the first place that I called on him for additional margin for the reason that some of the cotton had been stored for sev-

eral months and storage had accrued which reduced its value; then I told him secondly, 'I have understood that you have some light weight cotton among the cotton which you carried.'

"Q. Did you tell him that you heard he had three bales made out of two? A. No, sir, I did not state that.

"Q. Had you not heard rumors of that? A. I had heard that they had some light weight cotton.

"Q. *Had you you not heard rumors that they had made three bales out of two? A. Not at that time, I heard it later.*

"Q. Not before that? A. No, sir; not to my present recollection.

"Q. Have you not so stated in depositions given by you in this case? A. I do not think I did, if I did I can only speak from my present recollection now."

5th. **The Camfield weighing of the cotton.**

Mr. Biebinger testifies (Record, pages 108 and 123), that Camfield had forty bales weighed. These bales were at the St. Louis Cotton Compress. The certificate of weights (Record, pages 72–73) shows that the aggregate weight of the forty bales was 15,728 pounds, showing an average weight of 393 pounds, far below the average weight known in the trade. The bales of course were selected by Camfield and the order given to the weigher, who, as he testified, simply weighed the bales that were turned out for him in accordance with the order. This certificate was given by Camfield to Biebinger, as the latter admits.

6th. **Hudson explains the rebaling to defendant's cashier.**

We come now to the most important notice, and that was the information given to Biebinger, the cashier of defendant, by John Hudson, the proprietor of the cotton pickery, where all the cotton in question had been re-baled, who was in possession of all the facts, and who went to the bank, as

he says (Record, page 37) to let them know *exactly what he did with the cotton.* Mr. Hudson and Mr. Biebinger were the only witnesses to this conversation, and, as a comparison will show, there was no substantial conflict in their testimony as to what actually occurred:—

MR. HUDSON

testifies, Record, pages 33 to 39.

"Mr. Camfield told me he was called on for some margins and that he wanted me to explain to the bank what I had to do with the cotton. I had occasion to go to the bank, had some business with them, and I told Mr. Biebinger I wanted to state to him what I did to the cotton. He asked me what I did and I told him in sending the cotton back I did not put as much in a bale. I told him the cotton did not weigh as much as it did when I received it, and then he asked me, 'Suppose you get two bales weighing 1,000 pounds, you make three bales out of that,' and I told him that is about the way it was done. This conversation took place at the bank during business hours, and I don't recollect of any one else being present. * * *

"Q. Did either of you take a piece of paper in that conversation to figure down a thousand pounds and divide it by 3? A. I think Mr. Biebinger put it down, but I am not certain or positive about that, I think he did, that he made a calculation."

And on cross-examination (Record, page 37): "Q. Now, in May, 1882, you spoke to Mr. Biebinger about this cotton? A. Yes, sir.

"Q. How did you come to go there? A. Major Camfield sent me word they had called on him for margins and he wanted me to go

MR. BIEBINGER

testifies, Record, page 106.

"About the time that the margin was made good, Mr John Hudson, who was then and is now doing business with us yet some little, he came up to the bank and he stepped back to my desk and beckoned to me, and, by the way, I must here say that Major Camfield had informed me that the cotton had been sent to Hudson's pickery. Well, seeing Mr. Hudson there, I *was as anxious to see him as he was to see me*, perhaps he was more so to see me, as has been developed by the testimony here. Well, I asked Mr. Hudson about it and Mr. Hudson stated to me this, says he, 'Mr. Biebinger, the firm of Norvell, Camfield & Co. have sent some of their rejected and damaged bales over to my pickery for me to overhaul, to grade out, to assort the different grades, to take out all the damaged portions of the cotton and to rebale it again, and at their request I have done so and the bales have been returned." Mr. Hudson did not state to me that the cotton, he did not state to me the number of bales that he overhauled, he never stated that to me. Mr. Hudson, furthermore, did not state to me that the cotton was sent to him to make three bales out of two; he did not do anything of the kind at the time, nor at any other later period did he state that to me; on the contrary, he left me

to explain to Mr. Biebinger what I did to the cotton.

"Q. Well, then you went at the instance of a member of the firm of Norvell, Camfield & Co.? A. I went at my own instance, for the simple reason that I wanted to place myself right with the bank, because I was doing business with the bank.

"Q. But the suggestion came from Major Camfield? A. Yes, sir.

* * * * * * * * * *

"Q. Then you certainly did not go to the bank for the purpose of alarming the bank in any way, but rather to quiet things, didn't you? A. *I went there to let them know exactly what I did with that cotton;* I understood there would be some trouble about the cotton and *I went there to let them know all about it.*

"Q. Was any number of bales mentioned in that conversation? A. No, sir, I don't think there was."

in perfect ignorance as to the number of bales he had overhauled up to that time;" and on cross-examination (Record, page 124, *et seq.*): "Q. Did he say how the bales when they were returned compared in weight with what they were when they went to his pickery? A. He told me of course the amount of damaged cotton that he had taken out of the bales, that the original bale was so much and that it was so much less afterwards, as he took out any stained or damaged cotton. * * *

"Q. Did you ask him any further question? A. *He was standing talking to me, and not I to him.*

"Q. What did you say to him after he told you this? A. I don't know that I said anything to him, I presume I listened to what he had to say, I did not send for him.

"Q. You did not feel any interest in seeing him at all? A. Not particularly, I did not feel any alarm in the matter at all.

"Q. Did you not say this morning in your direct examination that he had said he was anxious to see you and when you saw him in the bank one morning you were anxious to see him? A. That was when he was there.

"Q. As long as he came you were willing to see him? A. As long as he was there I was willing to talk with him on the subject. * * *

"Q. Did you ask him any question at all about it after he made this statement to you? A. *I think Mr. Hudson did pretty much of the talking.*

"Q. The question is did you ask him anything. A. I may have

asked him one thing or another, I don't know.

"Q. Try and remember what you did ask him if it is at all impressed on your mind? A. The thing is two years ago and there are so many things passing through my mind that it would be impossible for me to remember distinctly whether I spoke to him or not, presumably I did speak to him, I very likely conversed with him on the subject, I presume some of his remarks may have elicited a remark on my part.

"Q. How long did the interview last? A. Not long, a very few minutes.

Q. Did you ask him how he got that cotton from the warehouses? A. I did not, not to my present recollection.

"Q. Did you ask him when he got it in order to see whether he got it before or after you had the cotton notes? A. There was nothing said about that.

"Q. You did not consider that of enough importance to ask him about it? A. No, sir.

"Q. You did not ask him how many bales he had overhauled? A. No, sir.

"Q. You did not consider that of enough importance to ask him about? A. No, sir; I had already information on that point from Major Camfield and I did not doubt it at all as to its being correct."

He further testified that he didn't think that he made a pencil memorandum during the interview, that he did not inquire of Hudson because he had confidence in Camfield's statement and thought he was secured by the margin, and testified further (Rec. p. 128): "Q. Did he, Hudson, make or was any allusion made to that (figur-

ing) in the conversation? A. As I told you my interview with Mr. Hudson was very brief and Mr. Hudson was not very talkative on the subject at all; if anything he was reticent about the matter.

"Q. And how were you, reticent or talkative? A. I was not very talkative about it.

"Q. So *that it was an interview between two very reticent* persons? A. *That was about it.*

"Q. As you stated this morning you were anxious and glad to see him? A. I was willing to hear what he had to say.

"Q. And then you both lapsed into a state of reticence. You did not think it necessary to ask him about it? A. I have told you all that I remember in this matter. I did not get any satisfaction out of him." (Record, p. 127.)

"Q. Did he tell you that he, Hudson, had sent an excess of the cotton to the Factors' and Brokers' Warehouse? A. He sent them to the warehouse; he may have mentioned the Factors' and Brokers'."

When the situation of the parties is considered comment upon the above testimony is needless. It is certainly too clear for argument that if Biebinger failed to ascertain the full extent and details of the fraudulent manipulation and shortage of weight it was simply because of his own *willful blindness* to the facts that were patent before him.

7th. **There was no difficulty in ascertaining the exact facts by weighing the cotton.**

An attempt was made by defendant on the trial to show that there was trouble or difficulty in weighing the cotton in store, but the attempt failed. It was shown that at the

time of the discovery of the shortage of weight by the defendant, May 27th, the stock of cotton in store in St. Louis was only 15,869 bales, having diminished from 46,501 on the first day of March, while on June 30th the stock still further diminished to 9,477 bales, and it was also shown that cotton in store was weighed whenever desired without delay and at a trifling expense. (Record, pages 75–6).

8th. **Defendant, according to its own testimony, willfully refused to make use of the means of knowledge which it knew it possessed.**

On this point Mr. Biebinger's own testimony is sufficient. (Record, page 126).

"Q. Now, when Mr. Hudson, the man who did the work, came to your bank, you having fourteen hundred and odd bales of that cotton pledged to secure sixty odd thousand dollars, did you consider it of sufficient importance to ask him how many bales he had overhauled? A. I did not consider it of sufficient importance to ask him that question for the simple reason that *I was willing to accept the statement of Major Camfield on the subject.*

"Q. Notwithstanding Major Camfield had already pledged the cotton notes to your bank, all of them, as representing cotton of good quality and full weight, did that impair your confidence in him any? A. No, sir.

"Q. You had such perfect confidence in him that you did not consider it worth while to ask Mr. Hudson, the man who had done this thing, when he stood before your desk how many bales he had overhauled, is that your answer? A. I did not deem it worth while to ask him on that subject. The fact of the matter is simply this that I did not put that weight and importance on those rumors, there was nothing positive about them, they were nothing but rumors, and I did not put any credit in them at all after I had seen Mr. Camfield.

"Q. Your confidence in him was such? A. Yes, sir; it is all confidence in cotton loans.

"Q. When your confidence in him was such that when you had an opportuniy to verify these rumors or show their

falsity by asking one of your own customers at your desk in the bank about them, you did not consider it of sufficient importance to ask him? A. I considered it of sufficient importance to have some of the cotton weighed, which shows that the matter was not altogether immaterial to me, that shows that I was not altogether careless in the matter.

"Q. No, but your confidence in him was such that you did not deem it of sufficient importance to ask Mr. Hudson anything about it? A. I don't know that it was *any of my business* to ask Mr. Hudson about it, I was satisfied in my mind that *we were fully protected* after taking an *additional margin*."

In short, the defendant having the means of knowledge saw fit not so use such means, but to rely upon the unsupported statement of the chief actor in the fraud.

To consider carefully the position of defendant at this time it must be remembered that it knew that Norvell, a member of the firm, was then in Great Britain armed wit its own letters of introduction commending his firm in the highest terms for the avowed purpose of effecting a *sale of this very cotton*, presumably of course, as full or average weight cotton. In this connection the guarded expressions in the letter of Mr. Biebinger of June 15, 1882, to Mr. Peisch, (Record, page 24) are interesting, particularly when compared with the expressions of the original letter given to Norvell on his departure (Record, page 16). He says in the letter of June 15: "I desire to say that Mr. Camfield "one of the partners, *informs me*, that the capital invested "in their concern is about $15,000, owned almost entirely "by himself and the junior partner, Mr. Eimer, while Nor- "vell, the senior of the firm, is well regarded as an ex- "cellent judge of cotton, he *personally* does not enjoy the "respect in the same degree as the other partners of the "house. Notwithstandlng, I am of opinion that as long "as Mr. Camfield remains in the firm he will carry out his "contracts and obligations faithfully and to the best of "his ability.

9th. **Defendant knew that the cotton was sold to plaintiffs and shipped as full or average weight cotton.**

On this point, as on the proceeding, the facts are undisputed. Defendant knew that Norvell was abroad endeavoring to effect a sale of this cotton. The cotton season was drawing to a close. Mr. Biebinger admits (Record, page 133), that he may have told Camfield that as the cotton season was drawing to a close it was not advisable to hold cotton, and that Camfield spoke of Norvell's intention, that he expected the news from him every day that he had completed the sale of some of the cotton, and that he heard of 600 bales of cotton being sold to plaintiffs on their agreement to accept bill of exchange for £6,000 with bill of lading attached.

Defendant thus had express notice that the cotton was sold and shipped as full weight cotton.

First, by the amount of the purchase price, £6,000, or at the then rate of exchange, $29,010, the amount paid by the New York bankers who purchased the exchange, the amount actually collected by defendant less exchange on New York being $28,973.74, or about $48.30 per bale.

Second, by the express recital of the bill of lading setting forth the weight of the 600 bales shipped as 276,815 pounds, or an average of over 460 lbs. to the bale; copy of this bill of lading being made and retained by the defendant.

Third, by the certificate of insurance attached to the bill of lading valuing the cotton at $33,845, or over $56 per bale.

These documents were received by the defendant, having been prepared for its benefit by Camfield, and the substance of the bill of lading copied giving the date, number of bales, weights, etc. (Record, page 135.) The bank there-

upon cashed a sight draft drawn upon Knoblauch & Lichtenstein, of New York, having been first shown a contract of K. & L. to purchase the exchange for that price, and placed the proceeds as above stated to the credit of Norvell, Camfield & Co., applying the amount of course first to the payment of the advances made upon the cotton.

It thus appears by the undisputed testimony that the defendant had *express notice*.

First. Of the manipulation and rebaling and of the shortage of weight, and,

Second. That the cotton was sold and shipped *as full weight cotton*, and *knowingly* applied the proceeds to the payment of its own debt, which, as already seen, was far in excess of the value of the cotton.

It will be noted that at the time of this shipment on July 27th, two months' additional storage charges and additional interest had accumulated since the demand for margin was made on the 27th of May.

10th. **The Cotton of the Merchants' National Bank.**

The effort was made at the trial to break the crushing burden of these proofs by showing that of the 600 bales shipped about 200 had been pledged to the Merchants' National Bank to secure a loan of $9,483 made thereon by that bank, the attempted inference being (Record, page 137), that the bank had made that additional advance upon the cotton as an argument to show its innocence of knowledge of the fraud. The facts, however, dispel any such inference. The defendant cashed the draft on Knoblauch & Lichtenstein on the faith of an express contract by the drawees to pay that amount for the bill drawn on plaintiffs in error, and defendant assumed no risk whatever in including the bales of the Merchants' Bank in the shipment; but

more than this, as already shown, the amount advanced by the Merchants' Bank and repaid them from the proceeds of the shipment, was only about $45.38 per bale, while the proceeds of the sale actually realized by the defendant bank were $48.28 per bale, leaving a very handsome margin.

It is submitted that the facts above stated not only show that the Court committed palpable error in withdrawing them from a jury and directing a verdict for defendant, but that a verdict should have been directed for plaintiffs on this very question of *actual knowledge*.

As already stated, this case is not to be confounded with the class of cases represented by Hoffman against The Bank of Milwaukee, 12th Wallace, 181, and Goetz *v.* Bank of Kansas City, 119 U. S. 551, involving the rights of the holders of negotiable paper. But the Court below seems to have overlooked this distinction and to have been misled by the rule of Goodman *v.* Simonds, 20th Howard, 343, and similar cases, that the *holder of negotiable* paper is not affected by rumors nor by the fact that he might with reasonable diligence and care have ascertained that there was a just defense to the paper as between the original parties, nor that there were circumstances to put him on the inquiry, but that he must have knowledge or be chargeable with bad faith.

In the first place, as already stated, this is not a controversy concerning the rights of holders of negotiable paper. The case is one of *deceit in the sale* of property sold and shipped for the joint benefit of pledgor and pledgee. The familiar rule, therefore, applies as to notice of fraud,— "if "facts are brought to the knowledge of a party which would "put him as a man of common sagacity upon inquiry, he is "bound to inquire, and if he neglects so to do he will be "chargeable with notice of what he might have learned "upon inquiry."

Bigelow upon Frauds, pages 288 and 289.

Caldwell, J. in Singer *v.* Jacob, 11th Federal Reporter, 559, citing the above, says: "When the facts and circumstances are such as to put a reasonable man upon inquiry, "that obligation is not satisfied by an inquiry addressed to "the chief actor in the suspected fraud when better and reliable sources of information are open to him."

"Whatever puts a party on inquiry, provided the inquiry "becomes a duty and would lead to a knowledge of the required facts by the exercise of ordinary diligence amounts "in law to notice."

Hood *v.* Fahnstock, 1st Pennsylvania State, 470;
McConnell *v.* Reed, 4th Scam. 117;
Lodge *v.* Simmilton, 2d P. and W. 439; and 23d American Decisions; Note also Wade on Notice, Sections 5 to 17

"A man has *actual knowledge* when he is conscious of "having the *means of knowledge* although he may not use "them." Speck *v.* Riggin, 40th Missouri, 405.

But even the strict rule applicable to the case of the holder of negotiable paper condemns the defendant in this case. Says this Court in Goodman *v.* Simonds, 20 How. p. 366-67.

"Every one must conduct himself honestly in respect to "the antecedent parties when he takes negotiable paper in "order to acquire a title which will shield him against prior "equities: while he is not obliged to make inquiries he "must not *willfully shut* his *eyes to the means of knowledge* "which he knows are at hand as was plainly intimated by "Baron Parks in May *v.* Chapman, 16th M. and W. 355, "for the reason that such conduct, whether equivalent to "notice or not, would be plenary evidence of *bad faith*."

In the case at bar undisputed evidence shows not a mere lack of care and caution on the part of defendant's cashier, but that deliberately and willfully he shut his "eyes to the

means of knowledge which he knew were at hand." Defendant's cashier discovered that a fraud had been perpetrated upon his bank; in the effort to protect his bank he obtained all the additional margin that he could from the pledgors and then refused to make further investigation and permitted the cotton to be shipped as *full weight cotton* and thus *secured the payment of his bank in full.* In the very analogous case of Mackey against the Commercial Bank of New Brunswick, 5th Privy Council, 394, appellants, commission merchants in Liverpool, before accepting drafts drawn by a consignor in New Brunswick, telegraphed to him, "If not remitted guarantee 2 due the 2nd of Sep- "tember will refuse all advised 11th, reply quickly." The drawer had absconded when the telegram was received, having conveyed all his property to trustees. The telegram was taken to the bank at which he had done business and which held the outstanding drafts drawn on the appellants. Evidence (but conflicting), tended to show that answer was sent by cashier in the drawer's name sent last mail. The statement was *true*, the guarantee having been sent,— but it was held that sending the telegram in the drawer's name was a *representation* that he was still doing business, and that the appellants having accepted drafts thereafter upon the assumption that the drawer was still engaged in business were entitled to recover in an action of *deceit against the bank*, the Court saying: "We regard it as settled law that the principal is answerable where he has received the benefit from the fraud of his agent acting within scope of his authority."

As between the defendant which admittedly put trust and confidence in Camfield, and by that trust and confidence enabled him to perpetrate the fraud by which it secured the payment of its debt, which would not otherwise have been paid, and the plaintiffs in error in Glasgow, who only knew Norvell, Camfield & Co. through defendant's introduction, clearly the former should bear the loss sustained by the fraud rather than the latter. As said by Mr. Justice Buller

in Fitzherbert *v.* Mather, 1st Term Reports, 12: "It is the "common question every day at Guildhall, when one of two "innocent persons must suffer for the fraud or negligence "of the third, which of the two gave credit?"

Upon the issue of actual knowledge then, it is obvious that the court erred not only in directing verdict for defendant, but in not directing verdict for plaintiffs — and it is therefore unnecessary to consider in detail the several assignments of error upon this branch of the case.

Upon each ground, therefore, that of defendant's responsibility in law for the trial of Camfield, of which it was the beneficiary, and that of its own knowledge of the fraud, the judgment of the Circuit Court must be reversed, and judgment directed for plaintiffs in error.

FREDERICK N. JUDSON,

WITH WHOM ARE
WARWICK HOUGH,
AND JOHN H. OVERALL,
For Plaintiffs in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 268.

D. M. McLEOD ET AL., PLAINTIFFS IN ERROR,

vs.

THE FOURTH NATIONAL BANK OF ST. LOUIS,
DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE FOR DEFENDANT IN ERROR.

This was an action at law brought to the March term, 1883, of the United States circuit court for the eastern district of Missouri. The petition is as follows:

PETITION.

DONALD M. McLEOD [AND] ARCHIBALD A. A. REID, Copartners as McLeod & Reid,

vs.

THE FOURTH NATIONAL BANK OF ST. LOUIS.

Plaintiffs state that they are now, and were at the date of the transactions hereinafter set forth, citizens of the King-

dom of Great Britain, residing in the city of Glasgow, and were then and now are copartners under [the] name of McLeod & Reid, and that defendant was then and is now a national banking association organized under the laws of the United States and located and doing business in the State of Missouri, in the city of St. Louis, in the eastern district of said State.

Plaintiffs state that heretofore, on and prior to July 22, 1882, defendant held in its possession in pledge certain bales of cotton, to wit, twelve hundred bales and over; that these bales were not merchantable bales, as known in commerce, containing four hundred and sixty pounds and over of cotton per bale, but the said bales had been by taking merchantable bales of the said ordinary weights to a cotton pickery and there dividing and then rebaling the cotton contained in such bales, so as to make about three new bales out of two merchantable bales, so that the new bales thus made contained only three hundred and twenty pounds or about that amount per bale.

That the bales thus held by the defendant had been theretofore pledged to defendant by a certain copartnership then engaged in business in St. Louis as cotton buyers, composed of one L. C. Norvell, John Camfield and one Eimer; and defendant, being ignorant at the time of the loan, as plaintiffs are informed, of the dividing and rebaling of the cotton, had loaned thereon to said Norvell, Camfield & Company a large sum of money, the exact amount of which is to plaintiffs unknown, but was far in excess of the actual value of the said cotton taken in pledge therefor.

That after the loans were thus made and prior to the date of the shipment to plaintiff hereinafter set forth, defendant discovered the condition of said cotton, its actual weights, and the facts in relation to the division and rebaling into three, as above detailed.

That at and before the said discovery by defendant of the true condition of the bales which it held in pledge, the

said Norvell, Camfield & Company were insolvent, as defendant well knew, all of their property being pledged to secure loans far in excess of the value of such property, and the defendant well knew that its only resource for the payment of said indebtedness of Norvell, Camfield & Company was the cotton which it held in pledge as aforesaid; that a sale of said cotton in the St. Louis or other markets, upon actual inspection and weighing, would realize only its true value, and would fall far short of paying the amount which it had loaned upon the cotton.

That defendant thereupon demanded of said Norvell, Camfield & Company that L. C. Norvell, who was then in Great Britain, should at once dispose of said cotton in foreign markets; and on or about July 9, 1882, plaintiffs being ignorant of the facts hereinbefore recited, agreed with said L. C. Norvell to accept the sixty-day draft of said Norvell, Camfield & Company for — sum of six thousand pounds sterling, upon a consignment of six hundred bales of said cotton, of merchantable weights of about five hundred pounds per bale, said advance being at the rate of ten pounds sterling per bale, and was based upon the cotton being of average merchantable bales.

That thereupon, on or about July 21, 1882, defendant being apprised of the aforesaid agreement of acceptance, and knowing well that said advance was based upon merchantable bales, and having all the bales in its possession, having loaned thereon, as it well knew, far more than the actual value thereof, did ship to plaintiffs six hundred of the rebaled and manipulated bales in its possession upon a through bill of lading, attached to the sixty-day bill of exchange for six thousand pounds sterling, drawn upon plaintiffs by Norvell, Camfield & Company.

That upon the face of the bill of lading, by which defendant caused the said bales to be shipped, and which was attached to the said sixty-day bill of exchange, was set forth for the purpose of deceiving plaintiffs a false and fraudulent

statement of the aggregate weights of said six hundred bales, to wit, 276,815 pounds, instead of the true weight of said bales, which defendant well knew was far less than such amount, and did not exceed 192,381 pounds.

That in furtherance of said scheme was attached to the bill of exchange and bill of lading a certificate of insurance upon the six hundred bales thus shipped, in which the value of the cotton shipped under the bill of lading was falsely and fraudulently set forth at thirty-three thousand dollars, a sum far exceeding by many thousand dollars, as defendant well knew, the actual value of the property insured.

That defendant did not itself purchase or discount the sixty-day bill of exchange drawn as aforesaid upon plaintiffs, the bill of lading and certificate of insurance attached, but caused Norvell, Camfield & Company to sell for its, defendant's, benefit the said bill of exchange for its full value, at the then current rate of exchange, to certain exchange brokers in [the] city of New York, to wit, Knoblauch & Lichtenstein, who were, as plaintiffs are advised, ignorant of the fraud thus being perpetrated, and who purchased the bill upon plaintiffs, in reliance upon the statements of the said documents attached thereto.

That defendant, being informed that said Knoblauch & Lichtenstein would purchase the bill of exchange drawn by Norvell, Camfield & Company upon plaintiffs, did cause said Norvell, Camfield & Company to draw their sight draft upon Knoblauch & Lichtenstein for the proceeds of said sixty-day bill to be purchased by them, to wit, the sum of twenty-nine thousand dollars, or about that sum, being the full amount of said bill, at the current rate of exchange, and did cause to be attached to the said sight draft, the sixty-day bill of exchange drawn on plaintiffs and bill of lading and certificate of insurance, and all of said papers were thereupon forwarded by defendant to New York, and there were surrendered by defendant to said Knoblauch & Lichtenstein upon their payment of the sight draft drawn

as aforesaid. Upon payment of said sight draft the defendant at once applied the proceeds thereof, to wit, the sum of twenty-nine thousand dollars, or about that sum, to its own reimbursement, principal and interest, upon the indebtedness to it of said Norvell, Camfield & Company, and paid in full, principal and interest, all amounts loaned on the cotton thus shipped.

That thereafter, in due course of mail, to wit, on or about August 9, 1882, the said sixty-day bill of exchange, thus drawn by Norvell, Camfield & Company upon plaintiffs, with bill of lading and certificate of insurance attached thereto, and purchased as above stated by Knoblauch & Lichtenstein, was presented to plaintiffs for acceptance.

That plaintiffs, in reliance upon and upon the faith of the statements of weights and value set forth in the bill of lading and certificate attached to the draft, having no opportunity to inspect any of the cotton which was then en route and did not arrive at Glasgow till several weeks later, having neither knowledge nor suspicion of the facts hereinbefore detailed relative to the condition of the bales, but assuming, as they had a right to do, that they were merchantable bales, as known in commerce, accepted the said bill and became liable thereon for the said sum of six thousand pounds sterling to the holders of said bill, to wit, the indorsees, for value, of said Knoblauch & Lichtenstein, who were also innocent of the fraud, being purchasers of the bill of exchange for value before maturity in due course of business.

Plaintiffs further state that the fraud thus perpetrated upon them with the knowledge and for the benefit of defendant was not discovered by them until the arrival of the cotton in Glasgow, on or about August 29, 1882; that then, immediately upon inspection, the true condition of the cotton, theretofore fraudulently concealed, was discovered; that the bales were not of merchantable weight; that the average weight was but little over (320) three hundred and twenty pounds per bale, and the aggregate weight was not 276,815,

as falsely stated in the bill of lading attached to the draft, but only 192,385 pounds.

That plaintiffs were compelled to pay and did pay the said bill of exchange thus indorsed as aforesaid for value before maturity to parties innocent of the fraud, and did pay the same, to wit, the sum of six thousand pounds sterling; that with the utmost diligence they were only able to realize from the sale of the said cotton the sum of forty-one hundred and seventy-three pounds sterling, which was its full value in the market at the time, and by reason of the said deficiency in weight, fraudulently concealed by defendant from plaintiffs as aforesaid, a loss was sustained by plaintiffs of nine thousand dollars.

Plaintiffs state that Norvell, Camfield & Company were then, and have ever since been and are now, insolvent; have abandoned business and are wholly without means of any kind.

Plaintiffs state that defendant not only knew the actual condition of the bales of cotton thus shipped, but held and retained possession of them until its own claim was paid in full by the sale of the bill of exchange in New York, and that it was thus the beneficiary of the fraudulent concealment thus effected, to the injury of the plaintiffs.

Plaintiffs state that on the 4th day of January, 1883, they made demand upon defendant for the said sum of nine thousand dollars thus lost by them as aforesaid, but said defendant refused to pay said sum or any part thereof.

Wherefore plaintiffs say that, by reason of the facts above set forth, an action hath accrued to them against defendant to recover their loss thus wrongfully sustained, and they ask judgment with interest from January 4, 1883, and costs.

By their attorneys,

OVERALL & JUDSON.

The answer is as follows:

ANSWER.

DONALD M. MCLEOD ET AL., Plaintiffs,

vs.

THE FOURTH NATIONAL BANK OF ST. LOUIS, Defendant.

Now comes the defendant in the above-entitled cause, and for answer to plaintiffs' petition it denies each and every allegation therein contained, excepting only its own corporate existence, which it admits.

FINKELNBURG & RASSIEUR,
Attorneys for Defendant.

On a trial of the issues before a jury testimony of witnesses was adduced by plaintiffs and defendant, which is preserved in full in the record and the substance of which is as follows:

STATEMENT OF FACTS.

With reference to the methods of business prevailing in St. Louis, Missouri, in regard to transactions in cotton and the pledging of cotton as security for bank loans, the testimony shows that shipments of cotton are made from the cotton growing regions to persons in St. Louis who are known as cotton factors—sometimes called "cotton merchants" by the witnesses, as distinguished from those who afterwards buy the cotton from them in St. Louis for resale and shipment to Eastern and European consumers; the latter are called "cotton buyers." Cotton is put up in bales, the average weight of which is about 450 to 475 pounds (printed Record, pp. 67, 49, and 90), but every bale above 300 pounds in weight is considered "merchantable" (pp. 67 and 38). Each bale is labeled with a number, but its weight is not indicated on the bale itself. It is stored by the factor on arrival in certain cotton warehouses, of which

there were three in St. Louis at the time in controversy (p. 27). The warehouse company issues a separate warehouse receipt for each bale, which receipt is commonly known in St. Louis as a "cotton note;" it is in the following form:

"Number of bale. Received in store of —— —— one bale of cotton, in apparent good order, of the above number and following marks." Then follow the marks. "Deliverable to bearer upon the return of this receipt and payment of warehouse charges, risk of fire excepted. (Signed) —— ——, secretary." On the back is stamped or printed the words "Cotton note."

These so-called cotton notes pass readily in St. Louis like negotiable instruments, and, being made out to bearer, are never indorsed. Banks take them as collateral security and it is in this way that the cotton factors and buyers of St. Louis generally borrow the money which they need from time to time for the prosecution of their business. The weight is not shown on these cotton notes; in taking them as collateral, banks assume an average weight (p. 90), multiply that by the market price, and ordinarily deduct a margin for possible fluctuations in value. When the cotton arrives in St. Louis and is stored in the cotton warehouse by the factor each bale is weighed and a memorandum is kept by him, but when it is sold for shipment it is reweighed and the latter weight governs the sale and shipment (pp. 70 and 67). There are professional cotton weighers in St. Louis, and a part of them make a specialty of weighing for shipments, these are known as "reweighers," and as distinguished from those who weigh the cotton originally for the factor (p. 58).

Weighing between arrival at and shipment from warehouse rarely takes place (p. 76); it is troublesome (pp. 77 and 67); the bales have to be turned out in the warehouse for weighing and a scale transported around, the handling of the bales for this purpose costs 15 cents a bale and the

weighing 10 cents a bale—total cost of weighing 25 cents a bale (p. 77). There is ordinarily no occasion for weighing except on arrival at and shipment from the warehouse.

When cotton is shipped the reweigher gives a certificate to the shipper showing the weight of each bale, and the aggregate weight, as shown by this certificate, is then furnished by the shipper to the railroad agent who inserts it in the bill of lading (p. 59). The shipper then draws his draft against the shipment, attaches the bill of lading, together with an insurance certificate, as collateral security and gives it to his banker, who usually at once credits him with the amount of the draft less his charges or discount. When the shipment is made to Europe it is customary to add a "Power of hypothecation" (see form on page 18 of printed record). In such case the foreign draft is often sold by the shipper to a banker in New York instead of St. Louis, and then he draws a sight draft on the New York banker to whom he sold his foreign exchange and he sells the New York draft to his St. Louis banker. To the New York draft, in such case, is attached as collateral—

1st. The foreign draft;

2d. The bill of lading;

3d. The insurance certificate;

4th. The power of hypothecation.

The shipper also makes out an invoice showing details of the numbers and weights to which he attaches the reweigher's certificate. These latter he transmits by mail direct to the consignee. If a St. Louis bank hold the cotton notes as collateral to a loan at the time the owner desires to make a shipment the bank generally permits him to withdraw the notes for the purpose of enabling him to get the cotton out of the warehouse and into the hands of the transporter with the understanding that the shipper is to bring to the bank the draft drawn against the shipment with bill

of lading attached as soon as he can have those papers made out (pp. 86 and 95).

We pass now to the particular transactions which have given rise to the present suit.

In 1882 Norvell, Camfield & Company were "cotton buyers" in St. Louis; Norvell, the senior partner, had been in the cotton business in St. Louis for a period of ten years (p. 50); the firm of Norvell, Camfield & Company was formed May 1st, 1881; Major Camfield had been in the cotton business in Georgia; Mr. Eimer, the third partner, was the son of a wealthy citizen of Belleville, Illinois, and well known in St. Louis. The business of the firm was quite extensive; they did the major part of their banking business with the defendant bank as the previous firm of Norvell & Company had done before, but they also kept an account at the Merchants' National Bank of St. Louis. They borrowed money on cotton notes at both banks from time to time, but principally at this defendant bank where their business amounted to about half a million during a cotton season (p. 104).

Between March 14th and April 26th, 1882, various packages of cotton notes aggregating 1462 in number came to the defendant bank as collateral security for seven loans or discounts procured by Norvell, Camfield & Company from time to time in the ordinary course of business, the respective dates and amounts of which were as follows:

Date.	Amount of loan.	No. of cotton notes.
March 14, 1882	$8,600—secured by	199
" 20, "	13,000 "	275
" 22, "	3,285 "	73
" 30, "	9,000 "	200
April 18, "	14,600 "	325
" 26, "	12,500 "	313
" 26, "	3,465 "	77
	$64,450	1,462

See pp. 41 and 42 Norvell, and as to note omitted by him (p. 113).

Biebinger—totals as above stated are given by Biebinger (p. 114).

These loans, it will be observed, were made at an average rate of about $44 a bale.

On the day of the last of the above loans, namely, April 26, 1882, Mr. Norvell, the senior member of the firm of Norvell, Camfield & Co., called at the defendant bank and asked for letters of introduction to persons in Europe, whether he contemplated going to inaugurate a foreign business, to get orders from the other side for the purchase of cotton here, &c. (Biebinger, p. 104; Norvell, p. 51.) Up to this this time the business of the firm at defendant bank had been entirely satisfactory, all obligations they had ever assumed had been promptly met; their business was large and apparently growing, and nothing had occurred to throw the slightest cloud or suspicion on any of their transactions (pp. 104 and 54). Mr. Norvell was furnished with eulogistic letters by the St. Louis Cotton Exchange as well as the General Merchants' Exchange of St. Louis. The one from the Cotton Exchange was as follows (see p. 52):

ST. LOUIS, *April* 27, 1882.

"*To whom it may concern:*

"The bearer of this, Mr. L. C. Norvell, is about to proceed to Europe to establish business relations there. Mr. Norvell has been a member of this exchange from its organization, and is one of the oldest cotton men in the country, and as well posted in the great staple as any man in the business. I have known Mr. Norvell personally for many years and have always found him reliable, popular, and original (?) and fully recommend him to the courtesy of our friends on the other side.

"Very respectfully,

"[SEAL.] E. W. SIMMONS, *Secretary.*"

The letter from the Merchant's Exchange was as follows (see p. 52):

"ST. LOUIS, *April 27th*, 1882.

"This is to certify that Mr. L. C. Norvell is a member of the Merchants' Exchange of St. Louis in good and regular standing. Mr. Norvell is of the firm of Norvell, Camfield & Co., of this city, and visits Europe on business. We bespeak for him the courtesy and attention of all those who may meet him. Mr. Norvell is a gentleman of high standing in this community.

"GEORGE H. MORGAN, *Secretary.*"

The above letters were shown to Mr. F. W. Biebinger, cashier of the defendant bank, who, upon request, also gave Mr. Norvell the following letter (see p. 23):

"[Seal of 4th Nat. B'k.]

"FOURTH NATIONAL BANK OF ST. LOUIS,
"ST. LOUIS, *April* 26, 1882.

"*To the "Deutsche Bank, Berlin," London agency, London:*

"GENTLEMEN: Permit me to introduce to you in the bearer of this, Mr. L. C. Norvell, of the firm "Norvell, Camfield & Co.," cotton buyers of this city. Mr. Norvell visits England with a view of forming business connections, soliciting orders from spinners and others for the purchase of cotton, and in pursuit of this object may have occasion to consult and advise with you.

"I would bespeak for Mr. N. your kind attention, and any favors shown him will be duly appreciated.

[Seal of 4th Nat. B'k.]

"Yours, most resp'y,

"F. W. BIEBINGER, *Cashier.*"

Also the following letter (see p. 16):

"FOURTH NATIONAL BANK OF ST. LOUIS,
"ST. LOUIS, *April* 26, 1882.

"To whom it may concern:

"This is to introduce in the bearer, Mr. L. C. Norvell, senior of the firm [of] "Norvell, Camfield & Co.," cotton buyers of this city.

"Mr. Norvell is regarded by cotton men of this city as an excellent judge of the staple, and from our own experience, having handled their domestic bills against purchasers of cotton to a large extent, we know the firm to have given general satisfaction to their patrons.

"Mr. N. visits England and the Continent with a view of extending the firm's business connections abroad, and believing them to be reliable and trustworthy we cheerfully recommend their house to the trade in their line.

"[Seal of the Fourth Nat. B'k.]

"Very respectfully,

"F. W. BIEBINGER, *Cashier*."

A few days after the date of the above letters Mr. Norvell departed for Europe and no communication, either direct or indirect, was had between him and defendant bank during his stay in Europe, nor did anything occur between his firm and the defendant bank having any relation to this controversy until the latter part of May, 1882, when Mr. J. D. Goldman, a cotton factor and customer of defendant bank, told Mr. Biebinger, cashier, he "had heard that there had been some cotton picked of Norvell, Camfield & Co.," and asked if he held any notes (p. 66). Mr. Biebinger said he did, and asked Mr. Goldman (who was also a director of the cotton warehouse known as the St. Louis Cotton Compress Company) "to see to it and have some of the cotton weighed," which he did (p. 66). It seems that Mr. Goldman then caused the superintendent of the St. Louis Cotton Compress

warehouse to weigh 15 or 16 bales of Norvell, Camfield & Co.'s cotton, and that he brought the result, giving the number and weight of each bale, on a memorandum to Mr. Biebinger a day or two after. Mr. Biebinger compared the bale numbers on the memorandum with the bale number on the cotton notes held by him as collateral and found that he held only a few bales of that lot; the average weight of this lot was between 390 and 400 lbs. per bale (p. 66). And this was the last and all the conversation Mr. Goldman ever had with Mr. Biebinger or any one connected with the bank on this subject (p. 66).

The substance of what Mr. Goldman said to Mr. Biebinger, the impression which it made upon Mr. Biebingers' mind and what he did in consequence thereof, is told in narrative form by himself, as follows, (page 105 of printed record:

"A. Well, Mr. Goldman came up and told me that he had heard of a rumor that Norvell, Camfield & Co. were carrying some light-weight cotton; that they had sent some cottons to the pickery to have them overhauled—stained bales that had been stained and damaged cotton—and that in consequence thereof there was some short-weight cotton, and that the rumor had reached him and he thought, as he was a friend of ours, that it was his duty to let us know; he didn't put any great stress on it; it seems he didn't think it amounted to much; nevertheless, I asked him to have some of these cottons weighed for me, and he went to work and had a lot weighed. I think it was fifteen or sixteen bales, and he brought me up the memorandum. The average weight of those bales was about in the neighborhood of 400 pounds. He left the memorandum with me and I went to work to trace the bales and and compare my numbers that I held—my numbers of bales that I held with those numbers that he had on his memorandum—and I could only find 4 or 5 bales in my possession corresponding with those on his memorandum, so I returned him his memo-

randum again, telling him the result of my examination, and, as it was so insignificant, I concluded in talking with him over the matter—we came to the conclusion that there was nothing in it to amount to anything. Nevertheless, I came—in thinking over the matter—I came to the conclusion that it was my duty to call for additional margins under the circumstances, and another reason induced me to do that was, this storage on cotton had accrued on some of the cottons for several months—four or five months—and I thought that if there was anything in that way it would be best for me to have additional margins; so, on the 26th of May, I believe it was, I notified the firm of Norvell, Camfield & Co. to put up an additional margin of $4 to the bale and to pay the accrued interest on the various notes up to that time. The interest then amounted to between $700 and $800. They very promptly responded to paying the interest, and in a very short time thereafter, until the margin was made good, the principal amount of the margin called for was made good in the next day or two and the balance in a few days thereafter. Major Camfield, after the margin had been put up, came to me expressing his astonishment why I should call on him for margin, inasmuch as cottons had not declined in price. I very candidly told the Major what I had heard; I told him, furthermore, that one of the reasons was the accrued storage on the cotton—the accrued interest; and, in consequence of this rumor, Major Camfield at once pronounced it an infamous lie; that there was nothing in it; that while it was true that among the large number of bales of cotton that they had purchased there were some bales that were called rejected bales that had to be moved from the cotton warehouse to the pickery, and the stained portions had to be taken out and the grades to be separated, and the cottons were then rebaled and returned again to the warehouse. He assured me, upon his word of honor as a gentleman, that there was no truth in the rumor of three bales having been made out of two, and that all his

cottons, or by far the greater majority of his cottons, were all of better quality, good middling cottons, and, with the exception of a very moderate number of bales, the bales were all in the original merchantable condition. Having had no doubt or no reason to doubt the Major's sincerity in his statement, never having had any cause to complain about him, I naturally believed the statement of the Major to be correct, and didn't pay any further attention to the matter of margins. We had the cotton margined down to about $40 or $41 a bale, and he stated in reference to that, too, that he had then a margin in the cotton of at least, at the very lowest calculation, taking everything off, of at least $13,000—$12,000 to $13,000.

On cross-examination Mr. Biebinger repeats his conversation with Camfield, as follows (p. 123):

"A. I think he stated to me—in fact, I am positive he did state to me—that he branded the rumor, as I have already said, as an infamous lie, and that it was set in circulation by parties inimical to them, and perhaps more especially to Mr. Norvell, but that there was no truth in it. He then went on to say that among the various lots of cotton that they bought there were bales among them of rejected cotton, bales that had been damaged—"cow eaten," as he termed it—and he had sent them over to the pickery and had the stained and damaged portions removed from the bales in order to have the grade of the cotton remain in good shape, and, such it was, to have the bales sent again to the warehouse, but that this was a very limited number, and that by far the greater portion of this cotton was of a very fine quality—good middling cotton—and that they were all in their original shape and form—had not been handled or overhauled. I had no reason to doubt the gentleman's statement, because our relations before that time had always been such as to show him to be a man of truth and veracity."

It further appears that Major Camfield, at Mr. Biebinger's request, had some of the so-called light-weight bales weighed and that he brought a statement certified by an official weigher to Mr. Biebinger, and Mr. Biebinger says they averaged nearly 400 pounds (p. 108). A copy of these weights as given by the weigher in his testimony (pp. 72 and 73) shows the correct weight to be 15,728 lbs., which for forty bales makes an aggregate of 393 lbs. per bale. Major Camfield represented the number of these repicked bales to be very small (pp. 106 and 123).

It further appears from the evidence that Mr. John Hudson, proprietor of a cotton pickery, being at the defendant bank on other business about the time the above conversations and transactions occurred, took occasion to speak to Mr. Biebinger, the cashier, about what he had done with reference to Norvell, Camfield & Co.'s cotton; told him that the cotton which he had picked did not weigh as much as it did when he received it. While Mr. Hudson and Mr. Biebinger differ about some of the details of this conversation, they both agree that nothing was said by Mr. Hudson as to the extent of the re-picking or the number of bales overhauled by him. On this point Mr. Hudson says (p. 37):

"Q. Was any number of bales mentioned in that convertion?

"A. No, sir; I don't think there was.

"Q. You did not tell Mr. Biebinger whether you had repicked 100 or 1,000 bales of cotton?

"A. No, sir.

"Q. The information simply was that some of the cotton had been repicked by you?

"A. Yes, sir.

"Q. That is not an unusual thing, is it, in the cotton business?

"A. No, sir; I should think not."

The cashier's account of this conversation is as follows (pp. 106–7):

"About the time that the margin was made good Mr. John Hudson, the gentleman who was then and is now doing business with us yet, some little, he came up to the bank, and he stepped back to my desk and beckoned me to him—and, by the way, I must here say that Major Camfield had informed me that the cotton had been sent to Hudson's pickery. Well, seeing Mr. Hudson there—I was as anxious to see him as he was to see me, perhaps he was more so to see me, as has been developed by the testimony here—well, I asked Mr. Hudson about it, and Mr. Hudson stated to me this: Says he, 'Mr. Biebinger, the firm of Norvell, Camfield & Co. have sent some of their rejected and damaged bales over to my pickery for me to overhaul it, to grade it, to assort the different grades, to take out all the damaged portions of the cotton and to rebale it again, and their request I have done so, and the bales have been returned.' Mr. Hudson did not state to me that the cotton—he did not state to me the number of bales that he overhauled—he never stated that to me. Mr. Hudson, furthermore, did not state to me that the cotton was sent to him to make three bales out of two; he didn't do anything of the kind at the time, nor at any other later period did he state that to me. On the contrary, he left me in perfect ignorance as to the number of bales he had overhauled up to that time. Well, I was perfectly satisfied in my mind that the think was all right and that there was nothing in it, as I would be with any other person in whom I had been in personal business connection—everything satisfactory. I would certainly, to a very great extent, take his statement before anybody's else. The matter thus went on; it never occurred to my mind that anything would be wrong from the assurance that I had received from the Major and the additional margin I had got until the cottons were shipped."

Now comes an interval of nearly two months, during which nothing further was said or done about this matter. The business of defendant bank was large, the daily volume of business being from one and a quarter to two millions per day (p. 110). Mr. Bierbinger, the cashier, was in the active daily management of the business (pp. 109 and 110). He testifies that he did not worry his mind about these cotton notes any further, that he was satisfied everything was all right, and that neither by conversation or otherwise was his attention called to this business again until some of the cotton notes were called for by Major Camfield for the purpose of making a shipment (pp. 110 and 111). In the meantime he had not called the attention of the president or directors to the matters above mentioned, neither at the time nor subsequently, he did not deem it worth while. Major Camfield's assurances and the fact that he responded promptly to the demand for additional margins allayed all further suspicion or misgiving, and he discharged it from his mind (pp. 106, 110, 123, 126, and see testimony of President Block, p. 98). The financial situation now stood as follows:

Since April 26, 1882, the bank had received ten additional cotton notes as collateral to a small loan of $950 (p. 122), so that the total number of cotton notes now held by the bank was 1,472 instead of 1,462 as given *supra* page —. On the other hand the loans had been reduced by payments of margins from $64,450 to $57,650 to which should be added the $950 supplemental loan, making the total indebtedness at this time $58,600, this was at the rate of a little less than $40 a bale.

In the meantime cotton had advanced somewhat, and assuming an average weight of 450 pounds to the bale, and assuming cotton to be worth 12⅛ cents per pound at this time in St. Louis, which is the price given by plaintiffs' witness, Paton, from his official quotations (p. 140), each bale was worth $54.56, thus giving a margin of $14.56 on each bale over the amount loaned thereon.

Assuming now that all the bales were "light weights" of the description included in the forty bales weighed by Camfield, viz.: an average of 393 pounds only to the bale, each bale was worth $47.65, and this still afforded a margin of $7.65 a bale. Applying this calculation to the total number of bales held by the defendant bank, we find the following results:

On the basis that defendant held 1,472 bales of cotton, of an average weight of 450 pounds to the bale:

450 × 1,472 = 662,400 pounds.

662,400 pounds at 12⅛ cts. =	$80,316 00
Amount of loan	58,600 00
Margin	$21,716 00

On the basis that one-half of the bales held by defendant were "light-weight," averaging but 393 pounds:

393 × 736 = 289,248 pounds.
450 × 736 = 331,200 "

1,472 620,448

620,448 pounds at 12⅛ cts. =	$75,229 32
Amount of loan	58,600 00
Margin	$16,629 32

On the basis that all the bales held by defendant were "light-weights," averaging but 393 pounds:

393 × 1,472 = 578,496 pounds.

578,496 pounds at 12⅛ cts. =	$70,142 64
Amount of loan	58,600 00
Margin	$11,542 64

Even on the basis of the *actual* weights of these 600 bales as afterwards developed, and assuming that all the 1,472 bales were of like weight, viz, 343 pounds to the bale, this defendant was protected; viz:

343 × 1,472 = 504,896 pounds.

504,896 at 12⅛ cents	$61,218 64
Amount of loan	58,600 00
Surplus	$2,618 64

It seems from the testimony that half a cent a pound was lost on one-half the bales shipped to plaintiffs by reason of inferiority in quality. While there is no pretence that the bank had any intimations on this subject at all, we will assume that half the entire lot, viz, 1,472 bales, were likewise deficient in this respect, it would lead to a still further deduction of $1,262.24, and yet leave a margin over and above the debt due the bank.

The testimony shows that Mr. Biebinger, cashier, figured on 12½ cents as the value of the cotton (p. 130), which would have increased the above margins considerably. Under these circumstances Mr. Biebinger considered the security ample, or to use his own words: "I considered that loan as safe as any we had in our collateral box, I did not feel the least alarm about it" (p. 131). It also appears that during this time, viz.: June 12th, 1882, Mr. Biebinger on behalf of the defendant bank discounted and cashed a draft for $13,000, with bill of lading attached drawn by Norvell, Camfield & Co. against a shipment of cotton not theretofore held by the defendant bank, and Mr. Biebinger says he would not have done so if he had thought there was anything wrong about Norvell, Camfield & Co.'s cottons. (See Biebinger, pp. 135, 136, and 137; and Johnson, p. 100.)

On the 25th day of July, 1882, Mr. Norvell arrived in St. Louis on his return from Europe. Mr. Camfield had previously informed defendant bank of his intention to with-

draw some cotton notes for shipment to Europe, but it does not appears that defendant knew to whom or on what terms (pp. 133, 134). It appears that Norvell had already sold his foreign exchange to be drawn against this shipment to Messrs. Knoblauch & Lichtenstein, of New York city. He did this himself while in New York and defendant bank had nothing to do with it (Biebinger, p. 108; Norvell, p. 58). On the day of Norvell's arrival (July 25) Major Camfield called at the bank for 400 cotton notes to make up a shipment of 600 bales, the other 200 cotton notes were to come from somewhere else. Major Camfield according to custom selected such packages out of the 1,472 notes held by the bank as he thought proper and took away the 400 he desired. The bank officers paid no attention to the selection and had no knowledge as to the packages selected except that they were designated by numbers. It seems that Major Camfield on the same day also withdrew 209 cotton notes from the Merchant's National Bank where they were held as collateral security for a loan of $9,483.60 due that bank (p. 99). The total shipment made to McLeod & Reid, the plaintiffs in this case, was 600 bales, made up of the 400 withdrawn from defendant bank and the 209 withdrawn from the Merchants' National Bank. Whether the 9 bales not included in this shipment were taken from the 400 or 209 does not appear. Mr. Camfield attended to the shipment and brought back to defendant the bill of lading for 600 bales attached to a draft on plaintiff for 6,000 pounds sterling and a sight draft on Knoblauch & Lichtenstein at New York for $29,010, to these papers was also attached an insurance certificate for $33,845 and a hypothecation certificate, copies of all which papers are to be found on pages 16, 17, and 18 of the printed record. The aggregate weight of the cotton was stated in the bill of lading to be 276,815 pounds. On receipt of these papers defendant gave the Merchants' National Bank a cashier's check for $9,482.60, the amount due that bank on this shipment and credited Norvell, Camfield & Co. with $28,973.74,

being the amount of the sight draft for the whole shipment less discount charged by the bank, so that in effect defendant advanced $9,483.60 additional on that day on cottons of Norvell, Camfield & Co.

None of the officers of the bank had anything to do with the details of this shipment or knew what had been done in regard to reweighing, etc., they simply assumed that everything was all right and that the weights as given by the transportation company were reliable. Nothing out of the usual course of things took place to draw their attention to this shipment as being different from any of the numerous similar transactions occurring in the course of this bank's business. The drafts were all paid in due course of time, and this ends the history of the transaction so far as the Fourth National Bank participated therein. What remains to be told is the story of the fraud actually perpetrated by Norvell, Camfield & Co., or some member of that firm.

It appears from the testimony that as early as November, 1881, Norvell, Camfield & Co. began to send cottons from the St. Louis Cotton Compress Company to the pickery of John Hudson, ten bales at a time, where they were opened, grades separated and then rebaled, but as Mr. Hudson puts it "I couldn't return all the cotton that I received in the "bales, because I could not make them in a merchantable "bale and put them in shape weighing as much as they did. "When they were returned they did not weigh within about "120 to 130 pounds per bale as much when I received them "as when I sent them back" (p. 29). Yet the diminished bales were returned to the warehouse whence they came with the old tag and number apparently full weight, while new bales were made out of the excess and sent to another warehouse, called the Factors' and Brokers' Warehouse, and that warehouse issued cotton notes for these new bales. Thus Norvell, Camfield & Co. were multiplying their cotton bales. It appears that 1,085 bales in all were thus withdrawn from the St. Louis Cotton Compress Company's warehouse from

time to time between November, 1881, and April, 1882, and that 1,599 bales were made out of them, 514 new bales being sent to the other warehouse (p. 35). The withdrawal of the cotton was permitted in many cases by the superintendent of the Cotton Compress Co. without production of the notes which the warehouse company had issued for the bales on a sort of easy going assumption that it was for the *bona fide* purpose of regrading merely and that the identical quantity would be returned (p. 83).

It seems that the original bales in the warehouse were unusually heavy weights, averaging 314 pounds and the bales when returned averaged 547 pounds (p. 35). The evidence does not show, and it was impossible to ascertain, how many of the 1,085 bales thus manipulated were among the lot for which the defendant bank held the cotton notes or how many were held by the Merchants' National Bank or other parties. No record of bale numbers is kept by the banks, so that when the notes are surrendered for shipment all information as to number is surrendered with them. Hence, it is also impossible to tell accurately how many of the cotton notes held by the respective banks (Merchants' National and Fourth National) passed into the shipment to McLeod & Reid—presumably 200 from the one and 400 from the other.

In the meantime, Col. Norvell had been to Europe and sold 600 bales of cotton to McLeod & Reid, of Glasgow, Scotland. Norvell testifies that he went to London first and presented his letter of introduction to the Deutsche Bank (see letter, p. 23 of Record). At his request, the Deutsche Bank gave him letters of introduction to its correspondents in Germany, at Bremen, Hamburg, and Berlin. It seems that Norvell made no sales in Germany, but on his return to London he took other letters of introduction from the Deutsche Bank to its correspondents at Liverpool and Manchester. McLeod testifies that Norvell showed him these letters of the Deutsche Bank as well as the letter of the

Fourth National Bank, addressed "To whom it may concern," and that, from the character of these documents, together with the impression made upon him by Mr. Norvell's appearance and business ability, he believed him to be reliable and trustworthy (p. 12). Norvell says he showed McLeod & Reid the letters from the St. Louis Merchants' and Cotton Exchanges; that he stopped over a couple of weeks at Glasgow and made their acquaintance and made this business relation; that he had several interviews with members of the firm; negotiated with McLeod for two weeks. In answer to the question, "During that time did he (McLeod) make any inquiry from you as to your financial standing?" Norvell says—

"He said to me one day in a billiard room, 'Now we are going into some business together, and I want to know who we are and what we are worth. We are worth forty to fifty thousand pounds; what are you worth? Says I, 'Not a nickel.' Says I, 'You will have to find that out from somebody else; I never blow my own horn.' 'Well,' he says, 'I understand your firm is worth $50,000.' 'Well,' said I, 'you know more about it than I do.'

"Q. Do you know where he made those inquiries concerning your firm?

"A. I do not.

"Q. Well, was it after that your transaction was closed—after this conversation?

"A. Yes, sir; this was the fourth day of July we had this talk, and we closed our transaction on the 7th." (Norvell, p. 53.)

After making the sale to plaintiffs Norvell returned to New York, where he sold a lot of cotton to other parties and also arranged for the sale of the foreign drafts to be drawn against the foreign shipment to McLeod & Reid. For this purpose McLeod & Reid had furnished Norvell a list of banks in New York which had been buying drafts on them.

One of these banks, when called upon, referred him to the broker Mackay, and he sold the drafts to Knoblauch & Lichtenstein (p. 54). From New York Norvell returned to St. Louis, arriving on the day when Camfield, in compliance with previous advices from him, had prepared to make the shipment to plaintiffs.

In making up this shipment to plaintiffs it became necessary, in accordance with the custom of business, to have the cotton reweighed and to produce the reweigher's certificate as well for the purpose of having the aggregate weight inserted in the bill of lading as to insert weights in detail in the invoice to be sent to the consignees. Major Camfield evaded this by inducing one Edward Haggerty, a cotton weigher of St. Louis, to certify to weights given him on a memorandum without, in fact, weighing the bales. Mr. Haggerty testifies that he had confidence in Major Camfield, accepted his memorandum as correct, and thought everything was all right (pp. 61–2; and see Haggerty's certificate, pp. 20, 21, and 22). Major Camfield then made out his invoice accordingly, attached Mr. Haggerty's certificate to it, exhibited them to the transportation agent, who inserted the aggregate weight thus shown in his bill of lading. He then took the bill of lading to the defendant bank, and mailed the invoice and weigher's certificate to plaintiffs.

The draft for £6,000 drawn on plaintiffs McLeod & Reid against this shipment was a sight draft, and of course reached Glasgow in advance of the cotton. It had attached to it the bill of lading giving aggregate weight signed by the transportation company, plaintiffs had also received the invoices by mail with the official weigher's certificate attached. Invoices, bill of lading, and weigher's certificates all agreed as to the weight, and, relying on the accuracy of these documents, plaintiffs paid the draft.

When the cotton arrived in Glasgow it was found that a large portion of the 600 bales were deficient both in quan-

tity and quality. The aggregate weight of the 600 bales was 206,043 pounds, instead of 276,815 pounds, thus showing a deficiency of 70,772 pounds (McLeod, p. 13). Besides this, 300 bales were inferior to the type samples shown by Norvell when the cotton was sold to plaintiffs. This inferior cotton was low grade, sandy, and had to be sold at a loss (McLeod, p. 14; Aitkin, p. 16). Plaintiffs claim to have sustained a total loss of $8,722.15 (McLeod, p. 14). How much of the loss was owing to deficiency in quality and how much from shortage does not appear.

The news of these shortages and deficiencies did not reach St. Louis until about September 1st, 1882; in the meantime Norvell, Camfield & Co. had withdrawn the remaining cotton notes from the defendant bank, and paid their indebtedness. When the news from Europe arrived they still had a balance of over $4,000 standing to their credit at defendant's bank, which they checked out subsequently. The account was finally closed October 28th, 1882. Major Camfield left the city of St. Louis about that time and the firm dissolved.

At the close of the evidence plaintiffs requested the court to charge the jury as follows:

PLAINTIFFS' REQUESTS FOR INSTRUCTIONS TO JURY.

1. The court instructs the jury to find their verdict for plaintiffs, and to assess their damages at the sum which they shall find from the evidence was the loss sustained by the plaintiffs in consequence of the actual weight of the cotton being less than the weight stated in the bill of lading, which was attached to the bill of exchange, accepted and paid by plaintiffs, not exceeding the sum claimed in petition, with interest from date of filing suit, March 1st, 1883, at rate of six per cent. per annum.

Which request was by the court refused, to which ruling of the court the plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

2. The possession by the defendant of the cotton notes for the bales of cotton pledged by Norvell, Camfield & Company in law vested in defendant the possession of the bales represented by said notes. When, therefore, the 600 bales of cotton in question were shipped to plaintiffs upon bill of lading issued upon surrender of said cotton notes, the defendant continued in law to hold the possession of said cotton until the sight draft drawn against Knoblauch & Lichtenstein was drawn against said shipment as fully as the bill of exchange drawn upon plaintiffs on said shipment.

Which request was by the court refused, to which ruling of the court plaintiffs duly accepted at the time.

Plaintiffs requested the court to charge the jury as follows:

3. If the jury believe from the evidence that defendant held in its possession the warehouse receipts (called cotton notes) for the six hundred bales of cotton in question as security for indebtedness due from Norvell, Camfield & Co. to defendant, and while so holding said receipts intrusted the same to one C. H. Camfield, a member of said firm of Norvell, Camfield & Co., for the purpose of consigning said cotton to plaintiffs, and procuring bill of lading therefor, and also certificate of insurance on said cotton, which said bill of lading and certificate of insurance was to be attached to a draft drawn upon plaintiffs, and the proceeds of the collection or sale of said draft were to be applied to the extinguishment of the indebtedness of said Norvell, Camfield & Co. to defendant; and if you find that said Camfield in procuring said bill of lading caused to be stated therein a false and fraudulent statement of the weight of the said 600 bales of cotton, and did cause a false and fraudulent statement of the value of said cotton to be set forth in

the certificate of insurance, the defendant, receiving said bill of lading and certificate of insurance from said Camfield, did cause the same to be attached to the sixty-day bill of exchange drawn upon plaintiffs, and did receive the proceeds therefrom and apply the same to the discharge of the indebtedness to itself from Norvell, Camfield & Co. and thus received benefit from said fraudulent representations of said Camfield while in possession of said notes; and if you further find that plaintiffs were induced to accept and did accept the said bill of exchange by reason of the false representations in said bill of lading and certificate of insurance, and sustained loss thereby, then the court instructs you that the defendant is responsible to plaintiffs in this action for the loss so sustained by reason of said false and fraudulent representations so made by said Camfield in procuring the said bill of lading, and your verdict should be for plaintiffs.

Which request was by the court refused, to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

4. If the defendant, while holding in its possession warehouse receipts (known as cotton notes) for bales of cotton stored in the cotton warehouses of St. Louis, theretofore pledged to it by Norvell, Camfield & Co. as bales of ordinary weight, as shown by the evidence, received notice that a number of bales of said Norvell, Camfield & Company's cotton, stored in said warehouse, had been manipulated by rebaling, so that the weight thereof had been reduced to less than the ordinary weight of cotton bales, then it was the duty of defendant, before permitting any of the said cotton bales of said firm to be shipped to plaintiffs on bill of lading, representing the bales shipped thereon to be of ordinary weight as collateral to bill of exchange upon plaintiffs, sold for its, defendant's, benefit to ascertain whether said cotton so shipped as of ordinary weight for its, defend-

ant's, benefit was of ordinary weight or not; and if it further appear that the cotton so shipped was represented in the bill of lading as of ordinary weight when, in fact, it was not of ordinary weight, and that plaintiffs suffered loss in consequence of such deficiency in weights by reason of accepting and paying the bill of exchange drawn against said shipment, then plaintiffs are entitled to recover from defendant the loss so sustained. And notice to the cashier of defendant was in law notice to defendant, and if the cashier received such notice it is immaterial whether he communicated the same to the other officers of the bank.

Which request was by the court refused; to which ruling of the court plaintiffs duly accepted at the time.

Plaintiffs requested the court to charge the jury as follows:

5. If the jury believe from the evidence that Camfield, in order to mislead plaintiffs and induce them to accept the bill of exchange for six thousand pounds, caused to be placed in the bill of lading a false statement of the weight of said cotton, and if the cashier of defendant knew that part of the cotton of Norvell, Camfield & Company held by them in pledge, and from which the cotton shipped was taken had been rebaled and the bales reduced in weight below the average weight of ordinary bales of cotton, then it was the duty of defendant to ascertain the true weight of the cotton shipped, and if it failed so to do and permitted Norvell, Camfield & Company to defraud plaintiffs by misleading them as to the true weight of said cotton and thereby to benefit defendant, then defendant cannot retain such benefit to plaintiffs' injury, but is liable to plaintiffs for any damage suffered by them by reason of the deficiency in weight of said cotton.

Which request was by the court refused; to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

6. The court instructs the jury that the knowledge sufficient to charge defendant with responsibility to plaintiffs in this action for the loss sustained by plaintiffs in consequence of the falsity of the statement of weight in the bill of lading does not require knowledge of all the details or the extent of the fraudulent manipulation, if they find from the evidence that defendant, by its cashier, prior to the shipment had knowledge of the fact of the manipulation and could have readily ascertained the details and extent if it had seen proper to do so.

Which request was by the court refused; to which refusal of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

7. The fact that a part of the proceeds of the sale of the bill of exchange drawn on plaintiffs received by defendant, was applied to payment of a note of Norvell, Camfield & Company due the Merchants' National Bank, and that part of the cotton bales so shipped had been pledged to that bank, constitutes no defence to this action if it appear that the 600 bales were all shipped on one bill of lading, and that such shipment was made for defendant's benefit, and the proceeds thereof, after paying such notes, applied to payment of its claims against Norvell, Camfield & Co.

Which request was by the court refused; to which ruling of the court plaintiffs duly excepted at the time.

Plaintiffs requested the court to charge the jury as follows:

8. If the jury find for the plaintiffs they will assess their damages at the sum which they shall find from the evidence

was the loss sustained by the plaintiffs in consequence of the actual weight of the cotton being less than the weight stated in the bill of lading which was attached to the bill of exchange accepted and paid by plaintiffs, not exceeding the sum claimed in petition, with interest from date of filing suit, March 1st, 1883, at rate of six per cent. per annum.

Which request was by the court refused; to which ruling of the court plaintiffs duly accepted at the time.

The court thereupon charged the jury as follows:

CHARGE TO THE JURY.

There seems to be no dispute as to many of the facts in this case. The cotton in question went forward to the plaintiffs under the bill of lading and hypothecation on which plaintiffs had a right to rely. It also appears that the statements as to weights contained in the bill of lading were false, whereby a loss to the plaintiffs occurred as stated in their petition. Who is responsible therefor? Unquestionably Norvell, Camfield & Co. But is the defendant liable? It seems that the defendant had advanced on cotton notes pledged to it a sum of money and entrusted the cotton notes to pledgor for the purpose of forwarding the same. The same were forwarded with the bill of lading and hypothecation, whereby the plaintiffs, as acceptors of the bill, received the same in the faith that said bill of lading was a true statement as to weight, etc.

There seems to be no doubt that the plaintiffs, relying on the bill of lading, accepted the draft accompanying the same, and consequently had a right to trust to the correctness as to the weight which they indicated.

That there was fraud perpetrated the jury will probably have no difficulty in determining. But who is responsible therefor? There is no doubt where the ultimate responsibility rests. In this case it is to be determined whether

there is an intermediate liability, to wit, the connection of the defendant with the fraud perpetrated. If the defendant knew of the fraud, to wit, the short weights, and with the intent to secure to itself payment of the indebtedness by Norvell, Camfield & Company caused said bill of lading, together with the bill of exchange connected therewith, the proceeds of which it was to receive, to be forwarded, then it, the defendant, is responsible for the loss incurred; otherwise not.

The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false on the shipment; and, if so, did it assent thereto with the intent to defraud the plaintiffs, as acceptors or drawees, of the bill? Whatever the cashier of the defendant bank did the defendant is liable for. Hence, the inquiry may be directed to the ascertainment of his knowledge and intent, and also the knowledge and intent of any officer of the defendant.

Did the defendant, through its cashier or any other officer, know that there were false weights sent forwarded in the bill of ladidg and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff? Is there any testimony of any such fraudulent knowledge or intent upon the part of the defendant? There is no testimony showing that there was any such fraudulent intent on the part of the defendant; therefore your verdict will be for the defendant.

To all that part of the charge commencing with the words "But who is responsible therefor? There is no doubt where the ultimate responsibility rests," and continuing to the end of the charge, plaintiffs duly excepted at the time.

To all that part of the charge contained in the words "The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false on the shipment; and, if so, did it assent thereto with the

intent to defraud the plaintiffs as acceptors or drawees of the bill?" plaintiffs duly excepted at the time.

To all that part of the charge contained in the words "Did the defendant, through its cashier or any other officer, know that there were false weights sent forward in the bill of lading and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff?" plaintiffs duly excepted at the time.

The jury thereupon rendered a verdict for defendant, whereupon plaintiffs filed their motion for a new trial, as follows:

MOTION FOR NEW TRIAL.

Now come plaintiffs and move the court to set aside the verdict and for a new trial, and for reason therefor state:

First. The court erred in its declaration of law in instructing the jury to find for the defendant.

Second. The court erred in refusing the declarations offered by the plaintiffs.

Which motion being overruled plaintiffs filed their bill of exceptions and sued out a writ of error from this court, and assigned errors as follows:

ASSIGNMENT OF ERRORS BY PLAINTIFFS IN ERROR.

In the Supreme Court of the United States.

DONALD M. McLEOD ET AL., Plaintiffs in Error,

vs.

FOURTH NATIONAL BANK OF ST. LOUIS, Defendant in Error.

Now come Donald M. McLeod and Alexander A. A. Reid, plaintiffs in error, and for the assignment of errors in above-entitled cause assign—

First. The error of the court in refusing plaintiffs' instruction numbered one.

Second. The error of the court in refusing plaintiffs' instruction numbered two.

Third. The error of the court in refusing plaintiffs' instruction numbered three.

Fourth. The error of the court in refusing plaintiffs' instruction numbered four.

Fifth. The error of the court in refusing plaintiffs' instruction numbered five.

Sixth. The error of the court in refusing plaintiffs' instruction numbered six.

Seventh. The error of the court in refusing plaintiffs' instruction numbered seven.

Eighth. The error of the court in refusing plaintiff's instruction numbered eight.

Ninth. The error of the court in that part of the charge to the jury included in words commencing, "But who is responsible therefor? There is no doubt where the ultimate responsibility rests." * * * And therefore to the end of the charge.

Tenth. The error of the court in the following words of the charge to the jury: "The proposition seems to be narrowed down to this inquiry: Did the defendant know that the weights were false in the shipment; and, if so, did it assent thereto with the intent to defraud plaintiffs as acceptors or drawees of the bill?"

Eleventh. The error of the court in the following words of the charge to the jury: "Did the defendant, through its

cashier or any other officer, know that there were false weights sent forward in the bill of lading, and assent to the forwarding of such false weights with the intent of defrauding the parties plaintiff?"

The error of the court in the following words of the charge to the jury: "Is there any testimony of any such fraudulent knowledge or intent upon the part of the defendant? There is no testimony showing that there was any such fraudulent intent on the part of the defendant; therefore your verdict will be for defendant."

Wherefore plaintiffs in error pray that for the foregoing manifest errors the judgment herein rendered may be reversed.

By FREDERICK N. JUDSON,
JOHN OVERALL,
Their Counsel.

ARGUMENT FOR DEFENDANT IN ERROR.

I.

This is an action on the case for deceit, and the essential charges made against the defendant are to be found in the following averments of the petition:

1. That defendant, having made advances to Norvell, Camfield & Company upon the pledge of certain bales of cotton, discovered that the bales were short in weight; that the firm was insolvent, and that the amount loaned by it was in excess of the value of the cotton pledged to secure the same.

2. That defendant thereupon, in order to further a fraudulent scheme, induced Norvell, Camfield & Company to sell these cotton bales in a foreign market.

3. That defendant ascertained and had full knowledge of the true quantity and quality of the cotton actually sold and shipped to plaintiffs.

4. That defendant itself shipped the cotton to plaintiffs (page 5, line 7, printed record).

5. That defendant itself shipped the cotton under a false and fraudulent bill of lading and insurance certificate (p. 5, line 13, *et seq.*, Pr. Rec.).

6. That plaintiffs, in reliance upon, and upon the faith of the statements of weights and value set forth in the bill of lading and insurance certificate attached to the draft drawn against this shipment, accepted the same, and were afterwards compelled to pay the same (p. 6, line 9, *et seq.*, Pr. Rec.).

II.

In order to recover a judgment against the defendant in this case it was incumbent upon plaintiffs to show that the defendant bank, at the time of the negotiation of the draft drawn against the shipment of cotton here in controversy, had actual knowledge of the true weights and value of the cotton, and also that it had knowledge of the fact that a fraud upon the plaintiffs was intended by said shipment, and further that the defendant intended to participate therein and derive a fraudulent advantage from the said shipment in manner stated in the petition.

III.

"It is equally a rule in courts of law and courts of equity that fraud is not to be presumed, but it must be established by proofs. Circumstances of mere suspicion leading to no certain results will not in either of these courts be deemed a sufficient ground to establish fraud."

Story on Equity, sec. 190.

Conrad *v.* Nicoll, 4 Peters, 291, 295.

King *v.* Hamilton, 4 Peters, 311, 327.

United States *v.* Arredondo, 6 Peters, 691, 716.

Strong grounds of suspicion are not sufficient.
Clark *v.* Whitt, 12 Peters, 178, 196.

And this rule is enforced more strictly in actions at law for damages than where equitable relief is invoked.
Story's Equity, sec. 190.

IV.

Taking up averments 4, 5, and 6 of the petition as above classified, we will, for the purpose of this argument, admit the last one (No. 6) to be true, viz., that "plaintiffs, in reliance upon and upon the faith of the statements of weights and values set forth in the bill of lading and insurance certificate attached to the draft drawn against the shipment, accepted the draft and were afterwards compelled to pay the same;" but charges 4 and 5, to wit, "that this defendant itself made the shipment under a false bill of lading and insurance certificate," lack any and all evidence to support them.

It may be premised in this connection that the cotton was not the property of the defendant at all, but was the property of Norvell, Camfield & Co.; that defendant was a mere bailee or pledgee of the warehouse receipts called "cotton notes." The defendant bank had no right to remove the cotton from the warehouse where it was stored, much less to sell it or ship it to Europe.

It appears from the evidence that one of the owners (Mr. Norvell) went to Europe to sell cotton long before suspicions of any kind were aroused (Pr. Rec., pp. 54 and 104); that he was not in communication, either directly or indirectly, with the defendant bank after his departure (Pr. Rec., pp. 53 and 104); that he sold 600 bales of cotton to plaintiffs without any conference with or knowledge on the part of this defendant; that he sent the necessary shipping directions to his partner (Mr. Camfield) who personally and without any participation or assistance on the part of defendant or any

of its agents procured the bill of lading, which recited certain weights furnished by Mr. Camfield to the carrier, and which the carrier embodied in the bill of lading. Mr. Camfield also procured the insurance and gave the valuation for that purpose. All these things were done by Mr. Camfield in the ordinary routine of business, without the slightest participation on the part of defendant or any of its agents, and were accepted by defendant as correct, precisely as plaintiffs afterwards accepted them as correct. The fraud in connection with these shipping papers began when Camfield prevailed on a negligently credulous weigher (Haggerty) to sign a false certificate of weights prepared by Mr. Camfield, and which he (Haggerty) failed to verify by actually weighing the cotton as he should have done. Armed with this false certificate Mr. Camfield prevailed on a carrier to adopt these weights as correct for the purposes of a bill of lading, and then supplemented the whole by taking out insurance on a valuation adjusted to the apparent quantity thus established by the bill of lading. The road was an easy one after the first step had been accomplished; the weigher's certificate prepared the way for all that followed, but the uncontradicted evidence shows that from beginning to end there was no participation on the part of the defendant bank, or any of its officers or agents, in any of the acts connected with this shipment, and that they had no knowledge of the methods resorted to by Mr. Camfield in connection therewith.

There were only two witnesses who testified from personal participation in this shipping transaction, viz., Hagerty, the weigher, and Lawton, the transportation agent. Camfield, the principal actor, disappeared soon after the first indications of trouble came from Europe, having first drawn most of the money remaining in bank to the credit of his firm. Norvell was not in St. Louis. It is not claimed that either the weigher or the transportation agent had any communication with the defendant about this shipment; indeed, the

testimony shows the contrary; neither the weigher nor carrier knew that defendant had any interest in the matter at all.

Defendant's cashier (Mr. Biebinger) testifies that Major Camfield called at the bank on the morning of the shipment to get the cotton notes, as is customary when shipments are made, and that he returned with a bill of lading and draft in the afternoon (Pr. Rec., p. 135); that he had nothing whatever to do with getting up either the weigher's certificate, bill of lading, or insurance certificate (Pr. Rec., p. 109). The testimony clearly shows that the whole business, so far as the bank was concerned, was a routine transaction (Pr. Rec., pp. 107–8). The testimony of Mr. Biebinger stands uncontradicted on this point.

We therefore respectfully submit that *there is not a scintilla of evidence as to defendant's participation in the shipping transaction or of knowledge on its part of the fraudulent issue of shipping papers*, nor does the record show that any representation of any kind was ever made by defendant to plaintiffs concerning this cotton, its quantity or quality.

V.

We now come to averments I, II, III of the petition as above classified, which, taken in the concrete, amount to this—

That defendant, though not the originator of the fraud, discovered an intended fraud before its final consummation; that thereupon it joined Messrs. Norvell, Camfield & Co. in furthering and promoting it for purposes of its own, and reaped a portion of the benefits resulting from its perpetration.

There being no direct testimony whatever of fraud or evil intent on the part of this defendant, we follow plaintiffs into the field of speculative evidence by them resorted to at the trial to sustain this branch of the case. Plaintiffs proved,

and defendant admitted, that some months prior to the shipment of the cotton in controversy defendant's cashier was informed by a friend (Mr. Goldman) that Norvell, Camfield & Co. had some cotton bales picked over and rebaled, and that, in order to ascertain whether this seriously affected the value of the cotton notes held by the bank as collaterals, the cashier had fifteen or sixteen bales of Norvell, Camfield & Co.'s cotton weighed in the warehouse where it was stored (p. 66, Printed Rec.). When the result was brought to him he found that the bales averaged 390 to 400 pounds—that is to say, they were still "merchantable bales," viz., over 300 pounds, but they were about 50 to 60 pounds under the average weight of that season's cotton; but he also further found, from a comparison of bale numbers, that the bank held but few of these particular bales in pledge (p. 66.). What followed is told by the cashier (Mr. Biebinger) on page 105 of his direct and page 123 of his cross examination (and see p. 16, *ante*). Without having any knowledge or idea of the true extent and meaning of this repicking and rebaling as subsequently developed, and without pursuing his investigations any further, he thought it prudent to protect the bank against any possible or probable reductions in weights by calling on Norvell, Camfield & Co. for additional "margins," which, under the usual terms of such loans, the bank had a right to do at any time. The call for additional margins at the rate of four dollars a bale having been responded to by the firm, he considered the bank amply secured against all contingencies. Whatever temporary doubts he might have entertained at this time were allayed by the plausible explanation at once made by Mr. Camfield when his attention was called to the matter, and his assurances as to the insignificant number of repicked bales, as well as the reasons why it had been necessary to do it, viz., that some few of the bales had been found to be what are called "rejected bales," being stained, of mixed grades, "cow-eaten," etc., and had to be removed from the cotton warehouse to

the pickery, so that the stained portions might be taken out, grades separated, etc. (pp. 106, 123). The information given by the cotton picker (Hudson) threw no new light on the situation and gave rise to no new alarm. The firm of Norvell, Camfield & Co. stood in good repute. The cashier believed and trusted. To use his own language, "I was perfectly satisfied in my mind that the thing was all right and that there was nothing in it, as I would be with any other person in whom I had been in personal business connection—everything satisfactory" (pp. 106–7). Mr. Biebinger also states that after the margin was paid and the explanation of Major Camfield made he considered that loan as safe as any they had in their collateral box, and that he did not feel the least alarmed about it (p. 131). The testimony shows that the cashier was a busy man, at the head of a large institution, and daily events of equal and greater importance crowded the events of yesterday out of his mind. The matter was settled to his satisfaction, and he simply discharged it from his attention.

In this connection it may be pertinent to refer to the tabulated statements on p. 20, *ante*, showing that the cashier was justified in considering the bank protected at all events.

There was no evidence contradicting or tending to contradict the cashier's testimony as to the state of his mind or his belief with reference to the matter at or after this time; no act done or word spoken on his part was shown to discredit it, but on the other hand several significant acts on his part were shown in confirmation. It appears from the evidence that about a month after the margins were paid and Mr. Camfield had made his plausible explanation the cashier advanced an additional amount of $13,000 on a cotton shipment of Messrs. Norvell, Camfield & Company, being cotton not before held by the defendant bank (Biebinger, p. 135; Johnson, p. 100).

It further appears that on the very day of the shipment here in controversy he advanced an additional sum of

$9,483.60 on 209 bales of cotton up to that time held by another bank (Merchants' National), and it may be noted in this connection that 200 of these 209 bales went into the shipments of 600 bales here in controversy, so that one-third of the bales actually shipped to plaintiffs were bales with which defendant had had no previous connection whatever (Johnson, p. 99; Biebinger, p. 137).

VI.

From the foregoing we summarize the following resulting propositions:

1. It stands admitted that defendant was not a party to the original manipulation of the cotton bales, or knew anything of it when it was done.

2. There is no testimony showing or tending to show that defendant did any affirmative act in furtherance of the alleged fraudulent scheme after the bales had been manipulated.

3. The evidence does show affirmatively that defendant remained passive to the disposition, sale, and shipment of the cotton.

4. The evidence does show that some months prior to the shipment to plaintiffs defendant's cashier acquired knowledge from Messrs. Goldman, Hudson, and Camfield that a few of the bales upon which it held a lien had been repicked and rebaled, because they had been found to be stained, mixed, and "cow-eaten," and that these bales were thereby reduced in weight, though still above the standard known in the cotton trade as "merchantable."

5. There is no evidence showing or tending to show that defendant or any of its agents gained any other or further knowledge on the subject, except what was gained from Messrs. Goldman, Hudson and Camfield in May, 1882, as above stated.

VII.

Under this state of the testimony plaintiffs abandoned the charge of actual knowledge and fraudulent participation so specifically, minutely, and emphatically averred in the petition, and sought to charge defendant on the theory that defendant acquired some information in May, 1882, bearing on the subject-matter which, if followed by diligent and thorough investigation, would have developed the whole state of facts, and that therefore defendant became chargeable with constructive knowledge, and consequently constructive fraud, whether in fact it did acquire such knowledge or not; in other words, that the defendant had knowledge sufficient to put it on inquiry, and that it was its duty to ascertain the intended fraud and to protect the plaintiffs. This is the theory of the 4th, 5th, and 6th requests for instruction to the jury asked by plaintiffs' counsel, and which requests were refused by the court below.

We submit that the doctrine invoked in these requests is not the law. Defendant had no duty to perform with reference to these plaintiffs. It stood in no such relation to plaintiffs. This, we repeat, is not an action growing out of contractual relations, but it is an action on the case for fraud and deceit. The gist of such an action is a fraudulent intent to deceive. It does not lie for a statement honestly made, though erroneous.

Russell *v.* Clark, 7 Cranch, p. 69.
Dunn *v.* White, 63 Mo., 181, 184.

Nor does it present a question of due diligence.

Lord *v.* Goddard, 13 How. U. S., 198.

In the case last above cited the defendant had actually made a representation to plaintiff, which turned out to be untrue, to plaintiff's injury, yet this court held (reversing the court below) that although defendant might have ascertained the

true state of facts by proper inquiries, yet he was not bound by the knowledge he might thus have acquired, but only to the extent of the knowledge he actually had acquired. We also refer to—

Taylor *v.* Ashton, 11 Meeson & Wellsby, p. 401.

This was an action on the case against the directors of a corporation for false and fraudulent representations alleged to have been made by them in a report which was published and whereby plaintiff was induced to buy shares. The evidence did not establish a *scienter* on the part of the defendants, and the jury, under the direction of the court, returned a verdict for defendants, but added that, in their opinion, defendants had been guilty of " gross and unpardonable negligence " in publishing the report. On a motion for a new trial it was contended that it was not necessary that moral fraud should be committed or shown, and it was insisted that proof of negligence, accompanied with damage to the plaintiff in consequence thereof, would support the action. But Parke, B., speaking for the court, said : " From this proposition we entirely dissent, because we are of opinion that, independently of any contract between the parties, no one can be made responsible for a representation of this kind, unless it be *fraudulently made* " (p. 415).

See also :

Pearson *v.* Howe, 1 Allen, p. 207.

It which case it was held that in an action for deceit, a declaration which alleges that the representations made were well known by the defendant to be untrue, is not supported by proof simply that the defendant had reasonable cause of belief that they were untrue.

In support of the same point we further refer to

Wilde *v.* Gibson, 1 House Lords Cas., p. 605, 623.

Young *v.* Covell, 8 Johnson's Reports.

Tyron *v.* Whitmarsh, 1 Met. Mass., p. 1.

Russell *v.* Clark, 7 Cranch, p. 69.

There was no duty cast on this defendant to discover the truth and to intercept the sale to plaintiffs; nor was it at all incumbent upon this defendant to inform itself further than it thought proper for its own satisfaction and protection, and when it arrived at that point it had a right to stop. This it did, the bank was satisfied with its security, and there it rested; what followed were transactions between plaintiffs and the owners of the cotton, in which the bank took no part, and in fact the bank never knew or heard of plaintiffs until their names appeared in the bill of lading.

There was then no relation between plaintiffs and this defendant which raised an obligation between them, nor is the petition drawn on any such theory; that petition charges fraud in fact, knowledge and intentional participation, while instructions 4, 5, and 6 asked by plaintiffs sought to hold defendant responsible for an act of omission, for want of diligence, for neglect—a departure from the cause of action as stated in the petition.

In other words, defendant is now sought to be charged, not for making a false representation itself—nor yet for knowingly permitting another to make one—*but for permitting another to make a representation which by diligent inquiry it might have discovered to be false.*

VIII.

There is not a single request for instructions to the jury, among the eight asked for by plaintiffs' counsel, which is based upon the averments of the petition. Not one of them proposes to submit to the jury the issues of fact originally presented by the pleadings, viz., fraud and deceit on the part of this defendant.

Number 1 is a formal request for an absolute and unconditional direction to find for plaintiffs.

No. 2 refers to the legal effect of the warehouse receipts, is subsidiary in its character, and does not direct a verdict either way.

Number 3 asks the court to instruct the jury that by permitting Mr. Camfield to ship the cotton defendant itself became responsible in law for all frauds Mr. Camfield might commit with reference to such shipment, independent of any knowledge or participation on defendant's part.

Numbers 4, 5, and 6 ask the court to instruct the jury that if defendant had notice or knowledge sufficient to put it upon inquiry it became liable for Mr. Camfield's frauds, whether in fact it acquired knowledge thereof or not.

Number 7 undertakes to place the two hundred bales, which came from another bank and which formed a part of this shipment, on the same footing as the four hundred bales which came from the defendant bank.

Number 8 relates to the measure of damages.

We respectfully submit that these requests show an abandonment of the original cause of action and an endeavor to shift upon new ground foreign to the nature of the action here instituted and foreign to the issues as tendered by the plaintiffs. Not one of the above requests speaks of fraud on the part of this defendant or proposes to submit any such question to the jury, but it is sought to charge defendant solely on a theory of a supposed legal responsibility, though innocent in fact.

IX.

The doctrine of constructive or presumptive notice is applied to questions of title to property as against purchasers who may thus be charged with constructive or implied notice of outstanding titles, claims, and equities, and in such cases the doctrine of knowledge sufficient to put a person on inquiry is also applicable.

Story on Equity, § 399.
Bigelow on Fraud, p. 288.

But the doctrine has no application to an action at law for damages on account of fraud and deceit. In such cases

there must be an actual *dolus malus*—deceit with intent to injure.

Kerr on Fraud, pp. 258 and 233.
Wilde *vs.* Gibson, 1 H. L. Cas., 623.

X.

Defendant's knowledge that there was a limited or any number of bales among Norvell, Camfield & Company's cotton which fell below the average in weight did not justify it to assume or believe that said firm would fraudulently misrepresent the true weight to a purchaser for the purpose of cheating such purchaser, nor was defendant called upon to exercise a surveillance over them in this respect. Every one has a right to assume that another person will act honestly until he acquires actual knowledge to the contrary.

XI.

Finally, plaintiffs in this court now seek to charge defendant on doctrines applicable to the relation of principal and agent, it being claimed that Camfield in all he did was but the agent of the defendant bank, and that the bank should be held responsible for his frauds. But how did the relation of principal and agent come into existence as between the bank and Mr. Camfield? It will hardly be contended that such a relation arose *eo ipso* out of the general relation of pledgor and pledgee, for ordinarily there is nothing in such a contract or transaction which constitutes the pledgor the agent of the pledgee. But plaintiffs' counsel says the bank let Mr. Camfield have 400 warehouse receipts or cotton notes to make up this shipment of 600 bales, and that this constituted him the agent of the defendant, citing a number of cases, all of which establish the doctrine that when pledged property is surrendered to the pledgor for a special purpose the lien is not necessarily lost thereby, but

that the pledgor holds it *in a fiduciary capacity* for the pledgee, and the pledgee may recover it from the pledgor, and sometimes even from innocent third parties. But this falls far short of saying that during this period the pledgor may bind the pledgee by any contract he may make or any fraud or tort he may commit with reference to the property thus entrusted to his temporary custody. No case is cited by plaintiffs, and after a careful examination we venture to say none can be found in the books going to that length. There is a marked distinction between an agent and a mere temporary trustee or person occupying a fiduciary position for the time being. The latter is not clothed with power to bind his *cestui qui trust* by contracts, or make him responsible for torts by virtue of his position as such trustee or custodian.

This transaction lacks all the essential elements which are necessary to create the relation of principal and agent. Defendant simply permitted Norvell, Camfield & Co. to deal with their own property. This was a right reserved by the custom of merchants in favor of the pledgors in all such transactions. Defendant did not select or employ Camfield or his firm as its agent for this purpose. It had no liberty of selection. It could not employ any one else to make this shipment nor compel said firm to do so. It had no rights in the premises at all so long as there was no default in the principal obligation for which this was a security. How, then, can it be said that Camfield was the agent of the bank when the bank could delegate no authority to him in the premises? The bank itself, we repeat, could neither sell or ship nor authorize and direct Norvell, Camfield & Co. to do so. It could merely *permit* them to fulfill a sale previously made by allowing them to substitute a draft for the purchase price with a bill of lading attached for the cotton notes theretofore held. It cannot be maintained that during the few hours' interval consumed in this exchange of papers Mr. Camfield was the agent of the bank, so as to bind it by

whatever contract he might make or torts he might commit concerning the property represented by these papers. It simply waived its right of possession for a few hours and permitted Norvell, Camfield & Co. to act in their own right what they had a right to do as the general owners of the property.

But beyond all this even a principal cannot be held in an action of damages for fraud and deceit if he is personally innocent of the misrepresentation made by his agent. He cannot *enforce* the contract, and the third party may, under certain limitations, have it rescinded, but he cannot maintain an action on the case against the principal unless there was *actual fraud* on his part.

Western Bank *v.* Addie Law Rep., 1 Scot. App., 145.
Wilde *v.* Gibson, 1 House Lords Cas., p. 605.
See also Dunn *v.* White, 63 Mo., 181.

So it comes back again to a question of actual knowledge and intentional fraud on defendant's part.

XII.

This action being based upon a charge made by plaintiffs against the defendant that it was a party to a fraud practiced upon the plaintiffs in the consignment to them of certain cotton on or about the 25th day of July, 1882, the letter dated April 26, 1882, signed by F. W. Biebinger, cashier, could not be received in evidence for any other purpose except that of determining whether the defendant was a party to such alleged fraud. And if by uncontradicted evidence it was shown that said Biebinger, at the time he wrote said letter, believed and had good reason to believe the statements therein made to be true, then said letter cannot be regarded as tending to prove that the defendant was engaged in or a party to such alleged fraud of July 25, 1882.

Although this is not an action based on an alleged false

recommendation of credit, no allegations to that effect being contained in the petition, yet certain letters were introduced in evidence apparently tending in that direction. They were not excluded in the court below, because it was thought that under the general charge of fraud they were admissible in evidence as part of the history of the whole transaction. Being in the record, we desire to notice their legitimate bearing on the case as it now stands.

When Mr. Norvell left for Europe he took with him a number of conventional letters of introduction—one from the St. Louis Merchants' Exchange (p. 12 *ante*), one from the St. Louis Cotton Exchange (p. 12 *ante*), one from defendant's cashier to defendant's correspondent at London (pp. 12–13 *ante*), and one letter from defendant's cashier addressed "To whom it may concern" (p. 13 *ante*).

At the time these letters were written, April 26, 1882, no one in St. Louis knew or had any cause to suspect that anything was wrong in connection with the business affairs of Norvell, Camfield & Co. They were in good standing, appeared to be building up a flourishing trade, their banking business with defendant had always been entirely satisfactory, they had the best of testimonials from the two largest and most influential commercial associations of the community, and the declared object of Mr. Norvell's visit to Europe, viz., to extend his export business, was a reasonable and proper one. There was then nothing in the circumstances under which these letters were given which throws the slightest shadow of bad faith or even negligence over this part of the transaction.

It appears that three of these letters were shown by Mr. Norvell to the plaintiffs. The letter from the merchants' exchange—the one from the cotton exchange, and the one from the defendant's cashier, addressed "To whom it may concern (Norvell, p. 53). The latter was written in the language usually accorded by mercantile courtesy to business men in good standing. It is a letter of introduction and not

a letter of credit; the writer does say that believing them to be reliable and trustworthy he cheerfully recommends them to the trade in their line. That the writer was sincere in this belief, and that he had a right to believe it, is abundantly shown by the uncontradicted testimony in the case.

A representation concerning the property or credit of another, if honestly made, does not become actionable although it turns out to have been untrue.

Russell *v.* Clarke, 7 Cranch, pp. 69, 93.

Marshall, C. J., in delivering the opinion in the above case, says: "The fact that Robert Murray & Co. were not, in "January, 1796, in solvent circumstances is not clearly made "out; but the cause does not rest entirely on this fact. The "principle that a mistake in such a fact as the real internal "solidity of a mercantile house, whose external appearance "is unsuspicious, shall subject the person representing their "solidity to another to the loss sustained by that other in "trusting to this representation is not admitted."

The recommendation must be both *false* and *fraudulent.* It is not a question of negligence on the part of the letter-writer.

Lord *v.* Goddard, 13 How. U. S., 198.

Nor does it in fact appear from the evidence that any credit was extended on the strength of this letter. Three letters were shown, each from a different party. Plaintiff McLeod testifies from the character of these documents, together with the impression made upon him by Mr. Norvell's appearance and business ability, he believed his firm to be reliable and trustworthy (p. 12, print. Rec.). Norvell's testimony shows clearly that plaintiff McLeod did not rely on the letters, but resorted to other methods of inquiry (Norvell, p. 53). Nor was any credit asked or extended in the true sense of the word. Norvell offered to *sell* cottons in Europe; not to *buy* anything. The possibility of complica-

tions arising out of an overpayment for cottons actually shipped were not and could not have been in the mind of any of the letter-writers at that time.

XIII.

On the question under what circumstances a trial court is justified in directing a verdict for the defendant we beg leave to refer to—

Pleasants *v.* Fant, 22 Wallace, 116.
Montelair *v.* Dana, 107 U. S., 162.
Randall *v.* R. R., 109 U. S., 478.
Marshall *v.* Hubbard, 117 U. S., 415.
Insurance Co. *v.* Baring, 20 Wallace, 159.

In the case first above cited the court says:

"Such instruction is right where the court would decide for the defendant on a demurrer to all the evidence, and the true rule in the case is that if, to the judicial mind, the evidence, tested by the law of the issue and the rules of evidence, is not sufficient to justify a jury fairly and reasonably in finding a verdict for the plaintiff, the court should so tell the jury. If the court can see that if a verdict for the plaintiff should be rendered, it ought to be set aside as being unwarranted by the testimony; such instruction should be given in advance of the verdict."

The whole subject is reviewed at length in this case.

XIV.

The charge of the court below points out two essential requisites necessary to hold this defendant responsible, viz., knowledge and fraudulent intent; and then states that there was no testimony showing any fraudulent intent; hence a verdict should be given for the defendant.